UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555-JMP

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 18, 2009

10:03 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Status Conference

Transcribed by: Pnina Eilberg

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. MILLER: Good morning, Your Honor. Harvey Miller on behalf of the Debtors. Your Honor, this is the day that was set aside for a report on the state of the Estate. And Mr. Marsal is here, Your Honor, to present that report with Your Honor's permission.

THE COURT: I'd be very interested in hearing from Mr. Marsal, if he can make it to the podium.

MR. MARSAL: Good morning, Your Honor.

THE COURT: Good morning. How are you?

MR. MARSAL: Fine, thank you. Your Honor, what we're going to to show you this morning is -- as of 10 o'clock was placed on our website. So everything you'll be -- everything you'll be going through is public information and, again, just have to call up our website and we can be able to -- and, of course, the company is available to answer any questions anybody has, which is what we've been doing in every 341 hearing.

What we're going to try and cover today, Your Honor, is basically a continuation of the 341 hearings which occurred in the first quarter and then in the -- in July. The -- we're going to try and cover the financial situation, asset management updates, claims management, the proposed timing of a plan of reorganization, where we stand with that, and some key

challenges that we have with the case.

Turning to the Executive Summary, overall the situation is stable and significant progress, I think, on all fronts. As far as the market is concerned, the market has eased as bit in terms of the liquidity crisis, which impacts our -- the disposition of our liquid assets, but the market is still very, very tight. That liquidity is not in abundance. The bar date has passed and the claims picture is coming into focus. We ought to be in a position by the end of this month, middle of December, to have a lot of the duplicates and errors and omissions identified, so we'll have a clearer picture of that.

The key challenges to the case today, from our perspective, is the resolution of the inter-company issues and there's just the sheer volume. I hate to tell you this, but there's a huge volume of legal activity on the horizon, which will have a -- there's just going to have a very busy calendar, or to the extent we can mitigate that, we will try. But there's a significant number of legal issues coming down the pike. We expect to try and file a plan of reorganization outline by the end of the first quarter. And it will -- based on today, I think you'll see why we are optimistic about at least getting the -- an outline of a plan prepared.

On the asset management front, the illiquid assets are being managed in a -- I think in a reasonable way in an improving market. We're seeing some modest depreciation in the

illiquid assets as the overall market has stabilized and started to improve. On the contingent assets side, we are, as you know, pursuing a case against the Bank of America and Barclays. On the unfunded commitment exposure side, we have reduced the -- the unfunded was approximately $34 billion. We've reduced that down to -- by 24 billion during the course of this year, since the filing of the bankruptcy. That's taken a lot of pressure off of the case, as well as a lot of the claims and mitigation. On the bank platform side, we've stabilized it and I think significant recovery value is likely from that asset category, provided we get the cooperation from the -- from a certain regulator. On the collection of the derivative receivables, that's a consent battle, and one which I think the Court will be seeing more and more of. On the liability management side, we received an excess of 64,000 in claims by the bar date in an amount in excess of $820 billion. This, I believe, is the largest -- is the largest amount of claims ever filed. We also would say that the -- it's not over yet. There's a significant amount of unliquidated and contingent damages which have not been -- which have really not be quantified yet. So we could actually achieve a trillion dollar level by the end of this process.

The numerous errors and duplicates are being cleaned up and, like I said, by the middle of December we should be in a pretty good position to clean that up and actually report on

that. Generally, most large -- most of the large financial institutions have taken an aggressive position on derivatives. Oddly enough, Your Honor, the financial institutions, the smaller players in the derivative world, tend to be far more realistic about their damages. Their damages could be one and a half to two times, whereas the financial institutions are 10 times. There doesn't seem to be -- you would sort of expect that the more sophisticated the financial institution, the lower the damages. Quite the contrary, it seems the more sophisticated, the greater the damages that are being requested. So we're weighing our way through that.

On the case administration side, financial reporting has improved. We are -- we should be filing the June 30th balance sheet by the end of this month. We fully cooperate with the examiner and expect a report from the examiner, based on his promise, by February 1st. We continue to make a strong effort to promote transparency and active communication. We're using the website aggressively and filing reports. We meet frequently with the UCC as a full meeting; we meet weekly with the UCC subcommittees.

In terms of the financial situation of the company, as of the end of September, we have approximately $16 billion in cash. Actually, on this report, we have 15 -- I guess, it's 15.5, 15.6. We, in fact, are in excess of 16 billion today. The -- what's important to note here, Your Honor, is we have

respected the integrity of separateness of each of the subsidiaries that remains. We have an audit trail on where the cash is and where it came from. There's no comingling of money; everything is consistent with the Court's direction -- earlier direction.

The next slide just outlines for Your Honor the activities which have occurred in the areas of -- what we've been spending our money on. What happens is holding spends the money and then the cost, in turn, is reallocated to the subsidiaries each quarter. So this is -- all the activity is captured at the holdings level, but the -- there's a line in here for reimbursement, which is where the subsidiaries reimburse the holdings for that activity.

Moving on to the finance and accounting, we just talked about the allocation of the subsidiary cost. We're current on monthly filings on cash receipts and disbursements and professional fees with the U.S. Trustee. We have the -- the updating of our balance sheets is improving. We, again, should have the mid-year balance sheet completed by the end of this month. International protocols, the -- by and large, the administrators of the other cases, other receivers, have accepted the September 14th, 2008, inter-company balance starting point, so at least we have a starting point that will not have to be -- we won't have to go through an extensive and wasteful forensic exercise. I think that everyone is convinced

that this is a -- this is the best guess of the company at the time.

On the tax update side, significant negotiations and discussions are taking place with various taxing authorities. I did not appreciate how many tax returns and how many tax authorities Lehman touched, but it is a major undertaking on the tax side.

Moving on to the IT migration. As you recall, we have 24 months to get off of Barclays' system. At that point in time they are under no obligation. We are -- we have until September of 2010 to accomplish that. We believe we will be finished by March of 2010 with that migration. That will reduce our costs. Barclays is charging us $58 million per annum. That will reduce the estimated cost to 22 million when we complete the migration.

On the asset side -- on the asset side, the first item of interest, I think, is the loan book. When we filed bankruptcy in September we had a $31 billion unfunded revolver exposure. Today we have approximately $11 billion exposure, and that has been terminated at a cost to the estate of about $33 million. So to -- just a -- pretty insignificant number of basis points to get out of this -- to get out of these revolvers. That trend, I would say, Your Honor, will continue, and I would say that by the second anniversary, the unfunded concern will no longer be a concern at the present rate.

Open trades, we have settled 96% of the open trades at the time of the filing. The -- within the pipeline, again, there's 43 terminations pending at a total of about three-quarters of a billion dollars that we should, again, before year end, that should also be factored into the unfunded system.

Turning the page to the loan book, a lot of numbers on this page. What I would ask you to look at is the difference between committed and funded is the unfunded portion of the revolvers. If you'll look at the fourth column, left to right, financial column, what you see is 10 million, 775. That's the total funded loan portfolio of the various subsidiaries in the far left column. The pledged and the retained is becoming increasingly less of an issue, particularly if we do find a way to reach settlement with the JPMorgan on our pledged collateral that the distinction between retained and pledged should be -- should no longer be the issue that it is today.

On the bank platforms, which the Court has been -- the Court and the Unsecured Creditors' Committee had been most helpful in trying to deal with this problem, the SIPA Trustee has cooperated and acknowledged that the customer claim of 534 million muni bond claim will -- you know, is, in fact, a bonafide claim. It is not, today, included in a -- it's included to the tune of about 200 million in the RBC ratio. So there's additional opportunity to increase the ratio to the

extent this is given full credit. The regulators, namely the FDIC, originally committed to reopen brokered deposits, keeping in mind the reason we needed brokered deposits is that you need to match up the liability runoff with the asset runoff to just buy us time to run the asset portfolio down. The FDIC told us orally if you get to about 10% we will permit you to do that. In fact, we brought the ratio to 17.1% and Washington decided they had a change of heart and refunded that, and we were trying to figure out how to get that squared away with the FDIC.

If you go to the next page, you see the numbers. You see what we brought this down from. Liabilities at the end of last calendar year were 4.8 billion. Today those liabilities in the Woodlands Bank is 2.9. So despite the fact that we brought it down 40% and we've increased the equity during this process at 17.1 -- up to 17.1%. And, by the way, the standard for everybody else is 10%, but the standard for us -- even at 17.1, we don't seem to be able to get the brokerage CDs opened up yet.

Moving on to the bank platform on the Aurora front. Aurora, as you know, is a mortgage -- is a thrift which also provides mortgage servicing. We service 113 billion in residential mortgages. There is also a mismatch of brokered deposit runoff and asset liquidation in that situation. We have the same problem that we had on the -- as we discussed on

Woodlands, where the FDIC has just been just somewhat uncooperative in terms of permitting us to get the mismatched dealt with. We're not asking for an expansion. We're just asking to -- can we just get to where we were at the time of the bankruptcy filing. We're not asking to grow this at this time. The financials on Aurora indicate the same pattern. At the end of December we had liabilities, which are primarily deposits, of $6 billion. Today we have deposits of 4.4, that's a 28% runoff in the -- over the nine-month period, a significant amount of progress on that score.

Highlights, the next key asset management item, Your Honor, is the private equity and principal investments. And, again, on this front, in this marketplace, it's just starting to open up where people are interested in buying property again. And we expect there'll be some more progress on this front, but there's been lots of headway on getting us out of our unfunded commitment exposure where we are asked to put additional capital into existing funds. We've gone from $4 billion at the filing to $2 billion today. As we get out of additional GP interest, we see that being driven down even further by the end of this year, by another $280 million.

The financial schedule, sorry, it's a busy schedule, I would just -- the value of our principal and private equity investments, second to last column is the carrying value. You see 8.3 billion, that's of domestic assets. Internationally,

which is primarily Asia, it's 1.7 billion. So we have at risk about $10 billion of the estate's recovery here. This is done on a category -- investment category basis. The next page, Your Honor, is done on a legal basis, which lays out where these assets are actually owned by legal entity to the same -- operating to the same 8.3 and $1.7 million number -- billion dollar number.

Moving on to the real estate section. On this score, Your Honor, we are -- we're a little bit different than the rest of the banking community. We are not in an extend and pretend mode. We have no downside to taking a reserve, so our attitude about if we are really the equity owner in a real estate project, then we want to be the equity owner in the real estate project and get the equity returns. So what we're doing is wherever we have a loan in default, we are aggressively moving against that loan in order to own the property to the extent that the taking of the hit does not have the implications that it might have to other institutions. So to do that, though, we're moving from a banking mentality to an asset management mentality, which is a real challenge for us all, and we continue to hire asset managers to assist us in moving into that new world, if you would. Unfunded commitments have been reduced by 76%, so while we have significant further investments in property, we do not have much in the way of an unfunded exposure anymore. It's below $400 million.

The breakdown of the real estate assets are on the next page. The key is the bottom line, second column from the right. We're managing approximately 14.4 billion of total assets in North America, Europe and Asia. And the same 14.3 is cut on the next page at a -- on our legal entity basis as opposed to the functional basis. And you see the same 14.3 for those people who are anxious to do the analysis of the various subsidiary values.

Moving on to the derivatives. We've collected approximately $8 billion to date, at least through November 6th on the derivative area. We've made a lot of headway and some of it is due to the cooperation of all the parties, and the unsecured, and the Courts in hearing some of these issues. We've also made progress on hedging our position so we can lock up the value that we have. It's our hope that we will be getting out of these hedging positions as we settle up some of these claims or at least sell these claims to somebody else who will stand in our shoes. Significant progress on the claims front. You know, it is a work in process and, like I said, it's an interesting situation where the smaller claims tend to be more reasonable and the larger claims -- I don't believe the larger claims perceive they have a downside on being unreasonable or asking for whatever they wish to ask for. There's -- there doesn't seem to be any downside in this claims process for the big banks in particular.

Moving on to page 27, we see what's happened with collections at various points in time, January 29th, July 8th and as of November 6th. I mean, it's just steady as she goes. We're collecting out on those receivables from the derivatives and putting it into the various derivative subsidiary bank accounts. The next page, page 28, we cover -- it covers the settlement process. You see there's three different points of settlement in this: reconciliation of the claim, evaluation, and then final settlement. And you see, in each instance -- in each instance the situation is improving but, you know, I'd like to say it's a faster pace, but I think this is just going to be a slug fest.

Next slide covers the summary of unfunded commitments. We have -- at the beginning of the case we had 37.4 billion; today we have 13, for a $24.4 billion overall reduction. And, like I said, our internal target is to have this 13 billion go away by the second anniversary of the case so that this is no longer an issue. It was a major issue at the time of the filing.

On the -- the next part of the report is claims management. What we would like to cover here, again, is that there are 64,000 claims totaling in excess of 820 million. 98% of the claims come from five Debtors; 89% of the claims come from five claim types. And we still have -- even with 820 billion, we still have 19,000 claims that have unliquidated damage components.

Turning to page 32, you see the breakdown on a Debtor basis of this $824 billion. I said 800 -- in excess of 820. Actually, 824 is what we have for this at the time of this preparation. And you see it broken down by Debtors with holdings having the lion's share, 666 million of the 807; LBSF having 88 billion of it. I mean billions when I'm saying millions. I don't mean to do that.

The next page breaks the $824 billion down by claim type, just into five categories, and you see there the key claims is the guarantees from the Debtor, the derivative -- these agreements that I just talked about earlier, and then the subordinated notes and, of course, the Lehman securities.

The reconciliation efforts, basically we're just trying to slide through this close to a trillion dollars and figure out what we have. The first step will be to get rid of the errors and omissions. We'll get through that and I think be in a much better position by the early part of the next quarter to cover what the real liabilities are. And in the mean time we're setting up teams, negotiating teams, reconciliation teams, to just really slug through this bundle of claimed liability. You know, in terms of next steps, I just covered that so we can move on.

On the litigation front, two litigation matters, Bank of America and Barclays. The Bank of America matter, as you know, Your Honor, the Cross Motions for Summary Judgment have been

filed and there's to be a hearing on December 10th. On the Barclays matter, the Barclays matter 60(b) motion was filed. We filed a complaint on November 16th. Significant subpoenaing and discovery is underway. I would expect, Your Honor, that this laundry list of litigations will grow, as other clearing banks will be -- we will be addressing certain issues we have with those clearing banks in the coming year.

THE COURT: Well, I can tell you that the actual list of litigation is much longer than the two items you've highlighted.

MR. MARSAL: Yeah, I'm -- I didn't mean to say it wasn't, Your Honor. I'm just -- from my perspective, these are the big dollar items.

THE COURT: I understand.

MR. MARSAL: In terms of the plan of reorganization status, the issue of substantive consolidation, it is an issue which is on many Creditor minds and there's a -- obviously a body which prefers it to be substantive consolidation and the other body would like it be separate. Our job is -- as you know, we are pretty much agnostic to this. We're trying to find out what the right answer is based on a process of while and it has provided us with criteria, we've then taken that criteria and tried to develop a fact base in each of the criteria, and that project -- that work is underway. But what I want to make sure you understand, we are not in a position

today to say where we come out on this, but this exercise will be thorough and it will be thoughtful. And the reason I say, just so everybody understands that we're agnostic to it, our contract, we believe we represent all the constituencies, and at the outset of this -- at the outset of out engagement, we, in fact, set up all of our success fees based on the entire estate, not on any one individual -- not any one individual Creditor group.

In terms of targeting the plan of reorganization outline, what we think we will have by the end of the first quarter is a plan of reorganization. Assuming we get through the substantive consolidation issue, we'll have a plan of reorganization outline, hopefully, for the Creditors to review and to work through with us. I think, though, it is going to be very, very difficult to get anything, obviously, in place by the end of exclusivity period. But we -- but I think we will be well on our way to fashioning what will be -- again, internally, we have -- we continue to shoot for a year end second anniversary target. And while others have said that's aggressive, I would like to continue to drive the organization to that kind of a timeframe, and I think much of it, if we go to the next page, our success in doing that depends on how these key challenges run. The first one is the inter-company transparency. We continue to -- we continue to need help on this score. We need better information out of clearing banks

and out of subsidiaries. We have a significant number of primary claim issues, which Your Honor is well aware of, that are coming down the pike, and we have significant secondary disputes, and I hope these don't overburden the Court, or at least we could figure out a way to deal with those secondary issues in an efficient way so that we're not here, you know, too long.

On the employee retention side, we -- this is a big problem, Your Honor, because the estate continues to suffer from employee attrition. We just lost a key guy in derivatives yesterday -- announced his resignation yesterday, as financial institutions are offering our people jobs. And trying to hold that together is becoming -- the good news, I guess, is the current environment is a poor environment for jobs. To the extent that improves, I'm going to have increasing pressure to figure out how to deal with certain of these things.

Your Honor, I'm open for questions, obviously. So to the extent that you -- you've got the hottest Courtroom in America, by the way, Your Honor, but --

(Laughter)

THE COURT: You're talking about the temperature.

(Laughter)

MR. MARSAL: The temperature, yes.

THE COURT: Well, if anybody wants to go into the overflow room, which is very comfortable down the hall, they're

free to do that, and you can get close-ups of the bench. I guess one of my questions, which goes to the last page, I focused on the use of the word overburden in reference to certain key challenges that will confront the estate next year. It's not entirely clear to me what these primary claim and secondary claim disputes are, and to the extent those disputes are foreseeable and the nature of the burden is identifiable, I'd be interested in knowing that.

MR. MARSAL: Okay, well, Your Honor, the -- in terms of the secondary, it really revolves around many of the issues having to do with the derivatives. There's just so much there on the derivative front and --

THE COURT: That's already here.

MR. MARSAL: Yeah.

THE COURT: Or at least a lot of it's already here.

MR. MARSAL: We have 25 big bank issues and the big -- the approach people are taking, oddly enough, Your Honor, is, on the big bank side, that many of the big banks would like to just settle this up, even though the smaller player is coming in with a claim significantly lower, proportionately, to the big bank. And, unfortunately, I think we're going to be like peeling the onion back, getting into the basis of this claim that the big banks are asking for. And I think at the end of the day the delta is going to be so big that we're going to need some kind of a mediating process, and I know that you've

helped us on this score. But I think it will be very important that we have these, at least at a minimum, these 25 institutions be able to do the homework and be able to get resolution on this thing so we can figure out what's a reasonable claim estimate. Because it's -- some of the claim estimates, Your Honor, are just flat out silly. I mean, they're just flat out silly. But why not? There's no downside. At least I don't see any downside. So that's really on the secondary front.

On the primary front, Your Honor, I don't want to get into the substantive consolidations. Obviously, a key issue that will -- you know, and there's a host of other issues, not the least of which is some of the clearing bank issues, the Barclays transaction, all of which are big, big dollar issues for the estate. And I would assume that that will be thoroughly reviewed and very thoughtfully handled. So those are the primary issues that I'm concerned about.

THE COURT: In terms of your timing as to the -- and I recognize that -- I think it was the last time you were here with a PowerPoint presentation and a state of the Estate media show --

MR. MARSAL: Yes, Sir.

THE COURT: -- you suggested that you believed that while it was aggressive, that it was realistic to think that the case could resolve itself within a couple of years. You

repeated that again today. But you also know a lot more today about the nature of the problems that confront the Debtor in terms of proposing a realistic and confirmable plan. Realistically, can this be done by the date that you've said? I know you're in a public forum here, but it seems to me that on the one hand you're saying we have enormous problems to resolve, and on the other hand you're saying we're still trying to make an aggressive deadline.

MR. MARSAL: Well, Your Honor --

THE COURT: Is that realistic?

MR. MARSAL: -- what I'm trying to say to you is that I believe you are -- you're being pragmatic about this. I think if my team would tell me I'm nuts, I mean, in so many words, they would say it's not going to be 24 months, it's closer to 36 months, and that may be best case. But I think, internally, we're driving this toward 24 months. If we don't make it, we will explain why and you will either accept or reject. But what I also have, Your Honor, is pressure. I have an exclusivity period that runs out in 18 months, and I want to be responsive to those Creditors who are clamoring for their own plan. I don't think that's going to be possible. I think there are too many significant open issues. So what I'm trying to do is be responsive to the law, being responsive to the case. But, I think, realistically, we're going to be hard pressed to make 24 months. But I'm trying to drive the

organization toward a 24-month answer.

THE COURT: I understand. What do you think the biggest problem is? Is there one single most challenging problem?

MR. MARSAL: Well, the number one question right now in my mind is, is this a issue of subsequent consolidation? Do I prepare 20 separate estate plans? Do I prepare one? Once I start to think about the plan, do I -- then I have to get into the derivatives, I have to get into the inter-company guarantees; I have to get into the legitimacy of the guarantees, and those are all -- from my perspective, those are all very difficult issues, and issues that are not really in my -- if you would, in my sweet spot. On the asset side, I feel very comfortable with what I'm seeing on the asset front. If the market will help us with improving the liquidity, I think we could make some significant headway on that score. The litigation -- the potential litigation claims, again, I think that's going to take us years, maybe, to resolve some of those issues. But I don't think that necessarily gets in the way of a plan. I think that just -- it'll take a while before we will ultimately decide it, and to the extent that we win, there'll be a distribution at that point. So I'm not troubled by that. I'm worried about the inter-company. I'm worried about how we resolve the inter-company because many of the other receivers are not operating on a 24- to 36-month timeframe, even though

they won't -- we're probably the only ones foolish enough to put a number out there. But, I mean, that's how we're managing this process to try and drive people toward a target, because if you don't set a bench mark, Your Honor, you're not going to -- you're not going to improve. So I don't think our timeframe and their timeframe are the same, so that could hold us up as well, and they could --

THE COURT: When you say their timeframe, are you talking about the foreign --

MR. MARSAL: Yes.

THE COURT: -- proceedings?

MR. MARSAL: Particularly, yeah, foreign proceedings and I don't know what LBI's timeframe is. I don't know enough about that situation, so I can't say pro or con, but I'm -- but I think everybody is -- would maintain that they're moving at a rapid pace. I'm not challenging that. I'm just saying our pace may not be at the same pace as what they're going on, so --

THE COURT: Okay.

MR. MARSAL: I mean, I don't know if that answers it for you, Your Honor, but, you know, I believe that the 24 months -- I want to continue to drive the organization to that, but I would not be at all surprised if we don't miss that time table.

THE COURT: Okay, I'm not trying to hold you to a --

MR. MARSAL: Yeah.

THE COURT: -- hard and fast and arbitrary data. I recognize that there are multiple challenges that you have summarized, and when you get down to the details, those challenges are probably even greater.

MR. MARSAL: That's correct, yes.

THE COURT: I appreciate the report and believe that it is a useful benchmark of information for the benefit of the Court and parties in interest. Thanks for your efforts.

MR. MARSAL: Thank you. Your Honor, could I have your permission to take my team and go to -- go back to work, or do you want to do it at the break? But I just --

THE COURT: No, I think you should go back to work.

MR. MARSAL: Okay, thank you.

(Laughter)

MR. MILLER: It's a great temptation, Your Honor, to step up here and call Mr. Marsal nuts, but I'm going to refrain from doing that. I would just add to what Mr. Marsal stated, Your Honor. As Your Honor knows, from your own experience, as you get closer to deadlines, parties seem to coalesce a great deal more as the -- they look like a bunch of convicts leaving.

THE COURT: It's an awkwardly public exit, isn't it?

MR. MILLER: As you get closer to the deadline, there seems to be more effort on the part of parties to reach a coalescing point. I would also note, Your Honor, that there

are more constituencies that seem to be organizing on -- they don't want to call themselves ad hoc committees, so they have different nomenclature for their organizations, but we are getting different groups organizing who want to meet with Mr. Marsal and his team, and to talk about a plan of reorganization and how claims would be dealt. So I think there's going to be a lot more activity of that as we go forward in the future.

THE COURT: Okay.

MR. MILLER: At this point, Your Honor, we would like to make a report on the international situation. Mr. Krasnow will make that report.

THE COURT: Thank you.

MR. KRASNOW: Morning, Your Honor, Richard Krasnow from Weil, Gotshal & Manges, on behalf of the Debtors. Your Honor, I'd like to take this opportunity to provide the Court with an update on the progress and, indeed, substantial tangible progress that has been made on the international front, specifically with respect to the global protocol. As Your Honor is aware, there are nearly 80 Lehman foreign direct and indirect subsidiaries that, subsequent to the commencement of the LBHI Chapter 11 case, commenced or, in some cases, had initiated against them a variety of insolvency, administration, liquidation, rehabilitation, and other types of insolvency proceedings across 16 foreign jurisdictions before different Courts and governmental, regulatory or administrative bodies.

In each of those instances, other than with respect to the Chapter 11 Debtors here in the U.S., and the Japanese proceedings where the law there does contemplate a Debtor-in-Possession, or Debtors-in-Possession, each of those foreign proceedings have at the lead, if you will, administrators, Trustees, and the like. Your Honor, given the integrated and global nature of Lehman's business, the Debtors recognized early on in these Chapter 11 cases that the efficient administration of these Chapter 11 cases would benefit from some global structure, if you will, that would enable all of the administrators and Trustees and the like to get together, to see whether or not we could coordinate our respective proceedings. From our perspective, we thought that would be beneficial because these were not isolated cases. They were all involved entities, which were part of the global enterprise, and, in addition to the various foreign Debtors through administrators and the like having a multitude of claims against the Chapter 11 Debtors, we, too, had claims against them. And, therefore, we strove to see whether or not there was some process would -- which would enable us to sit around the table, if you will, discuss and negotiate as to common issues, and, perhaps, come up with methodologies that would be acceptable to all of the parties, notwithstanding different legal structures that apply with respect to each of these foreign proceedings, to address the various claims

between and amongst us. There was and is no legal framework, statutory framework, that would allow us to accomplish that kind of goal, Your Honor. So, as the Court is aware, starting in January of this year, the Debtors engaged in a process to try to arrange for a contractual, if you will, structure that would allow us to accomplish that objective. Between January of 2009 and May of 2009, the Debtors engaged in negotiations with the multiple administrators, Trustees and the like, all of which culminated in what has been referenced as the global protocol, Your Honor, which was approved by this Court on June 17th, 2009. At that time, Your Honor, there were six administrators who were signatories to the protocol, in addition to the Chapter 11 Debtors, that covered 27 foreign Debtors. Since then, Your Honor, additional administrators and foreign Debtors have become parties, formal parties, to the protocol, and if I may, Your Honor, address by country, because that's the easiest way to do it, those who are signatories to the protocol, or who are otherwise participating in the process. From the United States' perspective, Your Honor, that includes not only the Chapter 11 Debtors, but the LBI Trustee. Going, I guess, from West to East, the Netherland Antilles, Switzerland, the Netherlands, Germany, Luxembourg, Singapore, and Hong Kong. I think I've covered all the signatories, Your Honor. In addition to those parties, if you will, LBJ, which is the Japanese Lehman entity, while not a signatory, has been

actively participating in the protocol process. Similarly, Lehman Ray, a Bermuda entity, has been actively participating in the process. Unfortunately, Libby has not chosen to either become a signatory or to become an active member of the process. That, however, has not precluded various parties from engaging with Libby on a number of issues, although we would obviously much prefer if they actively participated in the process itself.

THE COURT: Is there any prospect, in your view, of changing that situation for the better, and including the administrators of Libby in this process, either as signatories or as members of an informal group?

MR. KRASNOW: We have no indication that that would be the case. However, as the Court is aware, and as I was going to outline, there have been a number of global protocol meetings subsequent to this Court's approval of the protocol, the first of which was held in London in mid-July, and whether it was happenchance or otherwise, Libby, through Price Waterhouse Coopers, the administrators, decided to have their own meeting of -- in which they invited all of the members of the protocol to discuss not only what was happening in the Libby case, or cases, but also, in particular, one of those issues that is one of the prime issues that has been the focus of the protocol, which is the inter-company claims, and, in particular, in the London session, the non-trading inter-

company claims. And they made a presentation and made a proposal with respect to what I'll call the global close, which Mr. Marsal kind of alluded to, which was consistent in some respects with the approaching concept that the Chapter 11 Debtors had in mind in dealing with non-trading claims, and which has been, in our view, ultimately adopted by the administrators. There are significant differences between ourselves and Libby, but the fact of the matter is, there was some engagement. Again, Your Honor, I don't currently see them entering our tent. Unfortunately, or fortunately, to a certain extent, Libby has been a catalyst for an element of bonding amongst all of the administrators, because Libby itself played a crucial role in the global enterprise from a trading perspective, vis a vis the -- particularly the European Lehman entities, and as well as data, and a number of the administrators have common issues and concerns with respect to dealing with Libby in that regard. And one of the outcomes of these meetings that have occurred is, to a certain extent, uniform approaches to dealing with Libby, which, at the end of the day, we think may facilitate things, notwithstanding -- you know, Libby has a fundamental difference in perspective. They believe that everything should be bilateral. While we believe that ultimately there will be bilateral discussions with all of the administrators, it would be helpful if there were a multi-lateral approach as to a methodology, for example, in dealing

with claims. And we think that part of the benefits, as I said, in terms of the protocol, is kind of a uniform approach to certain issues, so that while PWC would like to do it on a bilateral basis, they're dealing with a number of parties, all of whom are approaching that {quote}{unquote} "bilateral" issue on a multi-lateral basis. We are not dismissing, at all, the possibility that Libby would participate. They are constantly being encouraged to participate, but we will see how that happens to progress.

Your Honor, as I indicated, we did have our first protocol meeting in mid-July. Part of the protocol process contemplated the formation of a procedures committee. The function of that committee, among other things, was to facilitate the development of a hopefully uniform methodology, to deal with inter-company claims and common issues. Since the first protocol meeting in July, there have been meetings, numerous meetings, six between August and November, all of which were by telephonic conference call. There was a second protocol meeting that occurred in Amsterdam in mid-October. Prior to that there was a seminar run by LBHI for the benefit of all the administrators with respect to the global close. Your Honor, the global close was a process initiated by LBHI to basically close the books and records of all of the affiliates as of September 14th, with the cooperation of Libby as well as other entities, many of which are part of the protocol process. And

one of the objectives, as noted, Your Honor, was to try to see whether or not there could be a consensus developed amongst the administrators to use that global close for the purpose of at least validating, if you will, the non-trading claims. While a number of the entities, which were subject to the supervision of administrators, participated in that process, they either participated in the process prior to the commencement of the insolvency proceedings, which resulted in the appointment of the administrators, so they themselves didn't participate or weren't aware of the process, or they took place subsequent to the commencement of the insolvency proceedings with lower level employees, if you will, so that the administrators were actually not aware of what was entailed. It was for that reason that we had the seminar here, Your Honor, in mid-September, to get the administrators familiar with that process. It was a multi-day seminar. And, as a consequence of that, at the Amsterdam meeting there was a resolution by the administrators that was along the lines of their agreement to adopt the global close, as certainly a starting point for the purpose of validating the amounts of the various inter-company non-trading claims.

THE COURT: Just a point of clarification.

MR. KRASNOW: Yes, Your Honor.

THE COURT: Has LBIE, through its administrators, accepted the September 14th global close date?

MR. KRASNOW: Your Honor, that was one of the common aspects between our approach and PWC's approach. The presentation that they made in London was an attempt, and, in part, a successful one, as was LBHI's, to demonstrate to the administrators the validity of that global close. So they endorsed that approach. They had a slightly different aspect to it than ours. Ours was to get people comfortable with the validity and methodology that gave rise to the global close. And in the absence of there being anomalous types of transactions, material breaks which demonstrated a further analysis was required, to basically accept the global close without engaging in what could be subsequent audits and very expensive protracted process. Libby's approach was, on the one hand, to show to all why they thought the global close was a valid process, which gave rise to valid numbers, but then suggested that, notwithstanding that, the parties should, on some basis, go through an audit process, which, in our view, and ultimately in the view of most of the administrators, was an unnecessary stage. So we are, together, if you will, looking at the global close, but then what we do with that is a slightly different approach.

There are ongoing discussions that are taking place with many of the companies in the U.K. that are in -- the subject of administration, and it may well be that when you get to the agreement and concept and get into the weeds, if you will, that

there may be more points of agreement with Libby and ourselves and perhaps the other affiliates, certainly on the non-trading side, than disagreements. So I hesitate to say -- I'm cautiously optimistic, but I think that so long as there's a dialogue taking place, there's the potential for agreement.

THE COURT: By the way, one follow-up point: is there a time of day in connection with the September 14th close date, or is it just -- or a time zone as it relates to that? And I mention that, in part, because I recall at the sale hearing on September 19 that there was much discussion -- I'm talking September 19, 2008, there was much discussion about an $8 billion transfer from LBIE to LBHI that took place, if I recall correctly, on September 12, and the funds did not return to London on September 15 because of the various insolvencies and the bankruptcy filing, in particular, of LBHI early in the morning hours of September 15. Does the global close concept do anything in reference to issues such as where the money happens to be at the point in time that the books are closing?

MR. KRASNOW: Let me answer the questions best I can, and that is it's intended to reflect what the books and records reflect as of September 14th, the close of -- well, close of business September 14th, but it's -- looking at September 12th, which is really when was the close of business, and then whatever transactions, if any, took place over the weekend. So you would get a picture prior to September 15th. That was the

objective of the global close.

THE COURT: So we're dealing with record keeping, we're not dealing with claims resolution?

MR. KRASNOW: We are dealing with record keeping -- the concept is dealing with claims resolution as it pertains to -- amongst the signatories to the protocol, and we are hopeful Lehman Ray and LBJ as well, as of -- with regards to their non-trading inter-company claims, with the 14th, the global close being the starting point with the recognition that since there were different commencement dates for foreign proceedings, that one might need to update that, if you will, to whatever the appropriate date is under the legal framework relating to those entities.

THE COURT: Okay.

MR. KRASNOW: Your Honor, the next global protocol meeting will be here in New York in mid-January. We believe that the next type of claims that really need to be addressed are the trading claims. We have started to make significant progress in that regard, but that will be a primary focus of that next meeting. In sum, Your Honor, the global protocol was described, during the process it was being negotiated and at the hearing at which the Court approved it, as an aspirational document, establishing parameters of what we would like to discuss and what we hoped to be able to resolve. I think it's fair to say that that aspirational document has borne fruit in

terms of tangible results, and we are still very optimistic that those results will continue to accrue in ways that will benefit all of the estates and all of the stakeholders. Your Honor, that's my report, unless the Court has any questions.

THE COURT: I'm grateful for the report and appreciate your good work.

MR. KRASNOW: Thank you, Your Honor.

MR. MILLER: Your Honor, Harvey Miller again. Your Honor, so that the record is not unclear, just because Your Honor mentioned that $8 billion alleged transfer, I would just point out that Mr. Marsal, in a prior presentation, as to the state of the estate, did report to the Court that there is no evidence of any such $8 billion transfer from LBIE to LBHI on September 12th or thereafter. So that may be still an allegation made by the LBIE administrators, but there is no evidence or proof of that transfer.

THE COURT: All right.

MR. MILLER: Also, Your Honor, as part of the future problems in administration and reconciliation, there is still a great deal that has to be done in connection with the relationship between LBHI and LBI. That will be a continuing effort to get to the development of the plan of reorganization by the date that we have targeted. Going back to the calendar, Your Honor, on the uncontested matters --

THE COURT: Before we --

MR. MILLER: Yes, Sir.

THE COURT: Before we get to that, two things.

MR. MILLER: Yes, Sir.

THE COURT: One, I recognize that Mr. Marsal was talking in a very general way about 2010 being a busy year for Lehman and this Court. I would like counsel to give some thought as to whether or not the omnibus schedule for hearings that we presently have set up is workable and practical, in light of what may be some increased needs for access to the Court. And it would be reasonable, since I don't decide what it is that's going to be filed, or what motions are going to be presented, I just deal with them once they're here, if there is an anticipation that this is going to be a particularly busy period, it may make some sense to return to the twice-a-month protocol that we had at the beginning of the case, or to develop some other schedule that will avoid converting omnibus hearing days into marathon sessions that become very difficult both for the attorneys and parties and for the Court, in terms of managing what will be a potentially massive amount of material. So it's just a suggestion. And I'm not urging it, I'm just asking that consideration be given to whether or not that's a good idea.

MR. MILLER: Yeah, I think it's a developing situation, Your Honor. Right now the current method of doing omnibus hearings is quite adequate, as Your Honor will see from

the calendar today, which is rather short. But it is certainly a matter under consideration.

THE COURT: Well, there's also tomorrow for adversary proceedings, and this afternoon for adversary proceedings. So even though --

MR. MILLER: Yeah, I'm --

THE COURT: -- you're going home, Mr. Miller, I'm here.

(Laughter)

MR. MILLER: Adversary proceedings, Your Honor, I'm putting into a different category. I think that will accelerate -- will expand, let me say.

THE COURT: I understand. I'm just suggesting that some consideration might be given to whether or not the current format is suitable for all parties. And my next point is really for the people who are gathered here. I suspect that there may be any number of people who are present in Court today for purposes of the status report that was given by Mr. Marsal and in connection with the international protocol by Mr. Krasnow, and if there are any people who would like to leave, I don't think either Mr. Miller or I will be offended, so I suggest that if anybody wants to leave, this is a time to do that. Everybody's welcome to stay who wants to stay.

(Pause in proceedings)

MR. MILLER: And just apropos, Your Honor, of the --

of your comment about format, as the reconciliation process goes forward with respect to claims that have been filed, the estate is considering alternative resolutions, maybe adopting an alternative resolution process which will involve mediation or arbitration, to relieve what might be a burden on the Court. And that's certainly under consideration at this point in time. We are also trying, wherever possible, Your Honor, to accommodate people and avoid any prolonged Court hearings.

Returning, Your Honor, to the calendar, on the uncontested matters, there are three matters, actually. Items 2 and 3, Your Honor, have been resolved. These are motions to modify the automatic stay. They have been resolved by stipulation with no impact on the estate, and agreed orders have been agreed to by the parties, Your Honor, will be submitted to the Court.

THE COURT: Okay.

MR. MILLER: So that would move us, Your Honor, to Item 4, which Mr. Waisman will be handling.

MR. WAISMAN: Your Honor, Shai Waisman, Weil, Gotshal & Manges. This, too, is an uncontested matter appearing at #4 on the calendar. As Your Honor just heard in Mr. Marsal's presentation, one of the largest asset classes for the Debtors, and a consistent theme in this Court, has been the real estate portfolio. Debtors have interests in over $14 billion worth of real estate; those are both owned real estate assets and real

estate assets where the Debtors are the lender. And subsequent to the filing, the Debtors have continued to move aggressively to enhance the value of that portfolio for these estates and all of their Creditors.

Your Honor has already approved two real estate related procedures motions, one relating to the foreclosure on real estate assets, as well as a motion relating to discounted payoffs. This, we hope, is the final real estate related procedures motion, and this really is an all-encompassing motion for procedures with respect to restructuring of real estate interests, both owned, and more likely here, in the Debtor's capacity as lender. These procedures have been negotiated heavily in connection with -- together with the Creditors Committee, and consideration has been given to previous and subsequent comments received by various Parties-In-Interest.

Subsequent to the filing of the motion and the procedures, we did continue to talk to the Creditors Committee about a few of their concerns and requests, and we've made additional modifications which would be handed up in an agreed order today. The two main areas of modification or addition relate to identifying for the Committee transactions that involve former employees that have now moved on and are working in cooperation with or for real estate groups or assets where the Debtors have an interest and are restructuring those interests,

as well as making clear that where the Debtors intend to make a new real estate investment but have in the prior period, I believe 6-month period, made a real estate investment in perhaps a different asset, but an asset that's part of a larger portfolio, that too, the prior investment, will be taken into consideration and will require the -- notice to the Committee.

With that, the only other thing I would say is that the Debtors, as set forth in the motion and the order, will make quarterly reports that identify with some specificity the restructurings that the Debtors have been entered into, but not in any way prejudicing their continued confidential business information that would otherwise disadvantage them.

I'm happy to answer any questions the Court may have, otherwise we can hand up an agreed order at the end of the hearing.

THE COURT: My only question is I didn't understand what you told me about employees who used to work for Lehman who are elsewhere. What does that have to do with this?

MR. WAISMAN: The Committee has requested that -- any number of employees that worked in the Lehman Real Estate Group, as with the global organization, as a result of the commencement, the sale, the general economic environment, have left and have gone on to work for other enterprises. Some of those employees have gone on to work for enterprises where the Debtors have existing interests; investments, loans

outstanding. The Committee has asked -- and those may be employees that were on the other side of the table when they worked for the Debtors and have now switched over. The Committee has asked us to identify transactions where a former employee, somebody who has -- was employed in the 6 months preceding the commencement date, is on the other side of the table, because it might be --

THE COURT: And what's the purpose of that identification, is it to deal with conflict issues or greater scrutiny? Because if it --

MR. WAISMAN: I think from the Committee's perspective, and they can certainly speak to it, but it's a stricter scrutiny so that we can identify and --

THE COURT: Okay.

MR. WAISMAN: -- they can take a closer look at it to make sure that everything is above board and as it should be.

THE COURT: Right, fine.

UNIDENTIFIED SPEAKER: That's correct.

THE COURT: Okay, good. The Committee has said that's correct so we don't need to hear from them further, and that motion is approved.

MR. WAISMAN: Thank you, Your Honor.

MR. MILLER: Your Honor, going through the contested matters, there are seven contested matters listed for today. Number 5 on the calendar, Your Honor, is the Debtors' Motion

for general authority to conduct examinations pursuant to Bankruptcy Rule 2004. There were nine objections filed, Your Honor. We have resolved all of those objections. The objections were primarily in timing issues and clarification as to document production. I have a blackline copy of a proposed order, Your Honor, which we can submit if Your Honor wishes to look at it now, or we'll submit it at the end of the hearing.

THE COURT: You can submit it at the end of the hearing.

MR. DUNNE: Your Honor, may I be heard on this one? I just have to put the Committee's position on the record.

THE COURT: That will be fine.

MR. DUNNE: Before I do, I actually have one comment about Mr. Marsal's update -- and for the record, Dennis Dunne from Milbank Tweed on behalf of the Official Creditors Committee. The Committee truly appreciates Mr. Marsal's efforts today. His state of the estate update furthered our shared goals of transparency.

As Your Honor may recall, the Committee had negotiated for and insisted upon this update being provided to all Creditors today as part of our settlement of an exclusivity objection several months ago. Today's presentation satisfied that condition subsequent to continued exclusivity, and the reason I belabor this housekeeping point flows from some questions we fielded before today's presentation, wondering whether Mr.

Marsal's presentation would be sufficiently robust to satisfy the condition in the Exclusivity Order. And I want there to be no doubt that at least from the Creditor's Committee standpoint it was and is sufficiently robust to satisfy that. That was the housekeeping point.

With respect to the 2004 Motion, the Committee supports the relief requested and, in fact, had originally raised some of the objections that have now been resolved by language changes to the order. The Committee also expects and has received assurances from the Debtors that, as we have in the past, we've cooperated throughout these cases, and in order for us to fulfill our independent statutory duty, we'll have access to the examinations and the data collected. If not, Your Honor, we may be back on our own Rule 2004 Motion; but I expect and hope not, that we'll be able to work that out cooperatively.

THE COURT: Okay.

MR. DUNNE: Thank you, Your Honor.

THE COURT: Thank you. It's now consensual, the motion is approved.

MR. MILLER: I would just add, Your Honor, we certainly intend to cooperate with the Committee in all respects. Sunny, why don't you come up here.

MR. SINGH: Good morning, Your Honor, Sunny Singh, Weil, Gotshal & Manges, on behalf of the Debtors. Your Honor,

the next motion on the calendar is the Motion to Assume the Interest Rate Swap Transaction with Structured Asset Receivable Trust, which is referred to in the motion as STAR Trust. Your Honor, we had a limited objection from U.S. Bank as Trustee for the Trust, and I can report to the Court that we've resolved the objection consensually.

THE COURT: Good.

MR. SINGH: If I can just run through generally basically the resolution. Your Honor, the U.S. Bank's limited objection primarily related to LBSF's demand for interest, and U.S. Bank's request for Trustee fees. Basically what we've done, Your Honor, is to -- decided to put off those issues to allow the parties to negotiate and come to a consensual resolution hopefully. If we can't, we've built into the order a mechanism that would provide the parties to go through either mediation through the ADR order that you've approved, or we'd be back before Your Honor. Some other minor points that U.S. Bank had in its objection have also been resolved. Calculation agent, they requested that LBSF perform the calculation agent role and provide to U.S. Bank the outstanding payments. We've agreed to provide for that in the order, and actually have already provided them with the statements.

The last point I think that they had, Your Honor, was the request to -- we've agreed to withdraw a request for the 6006 10-day waiver, we're okay with that. And so, Your Honor,

basically at this point, the transaction is consensual. U.S. Bank has agreed to the assumption and assignment to Goldman, which should bring in 7 million, and in addition, Your Honor, the principle payments that have been missed, the 5 million or so payments that are backed, U.S. Bank will make those payments, notwithstanding that we are still working to resolve the interest rate issue and the Trustee fee issue. So we submit to Your Honor that the -- oh, excuse me, the Creditors Committee, Your Honor, has been involved, has supported the motion and the transaction, that they've been involved in, and have signed off on the revised version of the order that I have for Your Honor at the end of the hearing.

THE COURT: Okay, fine, that's terrific progress in moving a contested matter to an uncontested matter. Is there anyone from U.S. Bank that wishes to say anything in reference to this?

MR. TOP: Your Honor, this is Frank Top from Chapman & Cutler on behalf of U.S. Bank, and I agree with the presentation that has been made, and it is a consensual order.

THE COURT: Fine, thank you.

MR. SINGH: Thank you, Your Honor.

THE COURT: The order will be entered.

MR. SINGH: Thank you.

MR. TAMBE: Good morning, Your Honor, Jay Tambe from Jones Day, Special Counsel to LBSF. We're here for a status

conference on a motion that was filed and heard last October 14th. This is a Motion to Compel Performance under a series of credit derivative swap transactions. After appearing before Your Honor last month, we have had a series of conversations and communications with counsel for the counter party, which is AIG CDS, Inc. We have made some progress, I'm hopeful we'll make additional progress, I think we are on the path to hopefully resolving this on a consensual basis. We're not there yet, but we're making progress.

THE COURT: Good. Well, stay on that path --

MR. TAMBE: Thank you, Your Honor.

THE COURT: -- and keep heading in the right direction.

MR. TAMBE: Thank you, Your Honor.

THE COURT: Okay.

MR. WEISMAN: Your Honor, still on the contested matter part of the agenda, #8 on the agenda on page 4, the motion of Banesco Banco Universal relating to the bar date. And I believe counsel is here to present their motion.

THE COURT: Mr. Seife, good morning.

MR. SEIFE: Good morning, Your Honor. I just want to make sure my colleagues are here as well. This is Howard Seife from Chadbourne & Parke, we're counsel for Banesco Banco Universal and Banesco Holdings, Inc. And we're here on a motion of Banesco. The motion originally had two parts. The

first part was seeking an order directing the Debtor to search its records and see if there is an ISN for a note held by Banesco, a 3 year Venezuelan bolivar fuerte link note. The Debtor has searched its records and has confirmed there is not an ISIN number for the note, and confirmed that that note does not appear on the program securities list. Therefore, it was not subject to the later bar date in November, but was subject to the earlier September 22nd bar date.

So our motion, then, is limited to the relief we are seeking under the excusable neglect standard that this Court exercise it's discretion to permit the late filed claim, which, as I said, should have been filed by the September 22nd date. And we're seeking the Court to exercise it's discretion under Bankruptcy Rule 9006 and 9024, as well as Section 105. The Proof of Claim has now been filed. It was filed by the second bar date of November 2nd, but as I said, it should have been filed by the earlier bar date.

By way of background, Banesco is a financial institution based in Venezuela. It principally does business in Venezuela. Our contacts with the client have generally been telephonic, though with some in-person meetings. Spanish is clearly the first language of the client. We, in our bankruptcy group, have utilized attorneys in our Latin group to facilitate communications and translate in certain circumstances.

The note in question, which is in the face amount of

$15,000,500, was listed in the Debtors' original schedules which were filed on March 12th, 2009, and it was listed as non-contingent, liquidated and undisputed. If the schedules had stayed like that, we wouldn't be here today. The Debtor, however, did amend its schedules and changed the designation for this note, and for many, many other claims, as contingent, unliquidated and disputed. We don't believe there is any actual basis to dispute the note. The Debtors don't suggest otherwise in their objection filed to the motion, so we don't feel there is a logical basis to object to the note other, than the fact of the late filing.

The note, like many of the securities that are on the program securities list, is a structured security in that payments are linked to cash flows on value of other instruments. Here the reference obligations are various Venezuelan, Brazilian, and Russian bonds, so it has certain of the elements of a structured note that were included on the list.

The start of the analysis as to whether this Court should exercise its considerable discretion in granting the late filed claim is clearly the Supreme Court's decision in Pioneer from 1993. The Supreme Court noted that the exercise of discretion is an elastic concept, an equitable one, and that the Court should take into account all relevant circumstances surrounding the party's omission. And the Court noted that this analysis

should include four factors, and the four factors are: one, danger of prejudice to the Debtor; two, length of the delay and impact on the judicial proceedings; three, the reason for the delay, including whether it was within the reasonable control of the claimant; and fourth, whether the Movant acted in good faith. And the 2nd Circuit in Enron, following the decision in Pioneer, noted those requirements, as well as the discretion of the Bankruptcy Court in determining these matters.

Going through the four factors, the first two have not been objected to or contested by the Debtor in their response. The first being the length of the delay, in this case, it's minimal, it was 41 days; rather than September 22nd it was November 2nd. And it was filed within the second bar date period. And there's clearly no interference with the claims review or reconciliation process or disruption of the judicial process. So I believe factor one clearly weighs heavily in favor of the Movant.

The second factor is the good faith of the claimant. Again, there's been no suggestion that Banesco has acted other than in good faith. It's not seeking to take advantage of the system or abuse the system, it is merely a Creditor with a fixed note that would like it recognized in the bankruptcy proceeding.

The third element of relief is the no prejudice to the Debtor element, and it is on this criterion that the Debtor

does take exception. However, we think the facts are clearly in favor of no prejudice here to the Debtor. The delay has been short -- and these are all factors which various courts have considered in determining the prejudice factor. As noted by the 2nd Circuit in the Enron case, the Debtor knows about the claim, has always known about it, it was listed on the schedules. It doesn't upset the review process. We heard testimony today from Mr. Marsal that they received 64,000 claims, and they are just starting the process of culling out duplicates and the like. It's a process which will take quite some time, given the 64,000 claims, 19,000 of which are unliquidated. There's no bona fide dispute to the claim, there is no plan or disclosure statement on file yet. As Mr. Marsal testified, they're hoping to get an outline to a plan perhaps at the end of the next quarter, but there remain substantial issues to be resolved, including intercompany claims. And I think it's fair to say the claim is inconsequential in relation to the size of the case and the estate. It's a 15-and-a-half million dollar claim in comparison to currently $824 billion of claims filed, with projections of going up to a trillion dollars.

The argument which the Debtor focuses on is the floodgates argument that if the Court were to permit this claim, then there would be a long line of parties filing late claims to take advantage of the Court's ruling. I think in this

situation, given the nature of the circumstances here, it is an extremely limited crack that might be open, and it's a finite crack. And we're dealing here with a situation where a party missed the September bar date, but did file by the November 2nd bar date, and filed a motion with the Court seeking leave to recognize that late claim before the November 2nd deadline. So it's an extremely limited pool of parties. We have checked the docket. There are only three such motions which have been made, I believe they are all on before Your Honor today. So I don't think we are faced with a floodgates situation.

The Debtors cite to the Kean case, a very different set of circumstances where the Court did find prejudice. That was an asbestos case that had been going -- that the claimant had passed the bar date by 9 months and the Court noted that a consensual plan had been negotiated. There was a hearing on the Disclosure Statement scheduled. It had been a very contentious case, and the Court didn't want to upset the balance and having the risk of thousands of asbestos claims filed if the Court would allow that one. So very different circumstances. The Enron 2nd Circuit case, very different circumstances. The fear there was opening the gates for late-filed guarantee claims, which the estimate said could be a thousand. So again, I think on the prejudice count, it strongly weighs in favor of the Movant.

Reason for the delay, the fourth criteria, and it may be

the single most important one of the four, but again, as the Courts have noted, it's a weighing and balancing of all four requirements. And Pioneer makes clear that the Courts are permitted to accept late filings caused by inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control. So we're not talking about situations that are merely limited to omissions caused by circumstances beyond the control of the Movant, and as I'll explain the facts, I think it's a combination of many factors here which gave rise to missing the initial deadline.

Chadbourne filed over 100 claims for a variety of different clients, all before the September 22nd bar date. And this was certainly not a case, and there are many on the books, of Movants having ignored deadlines, inattention to bar dates; this was certainly not the case. Chadbourne was very much involved in the case, understood the bar dates, and was very familiar with them. The primary Chadbourne attorney that was handling the matter from the outset was very experienced. She had been practicing with the firm since 2001, had done many claims over the years. She initially met with the clients right after the filing of Lehman in September -- in the period September/October 2008. At that time, the client handed over to her a variety of documents, including the prospectus for the MTN notes, as well as the terms and conditions for two separate holdings, and also turned over the note in question. And those

are all placed by the -- that associate in a file labeled "Banesco Structured Notes." Also put in the file were two account statements which the -- which Banesco had with Lehman, and that was put in the file. In the course of the meetings with the client, the client expressed and the Chadbourn lawyer came away with the view that the note in question was part of the MTN program and was issued under the prospectus. Clearly that was not the case, and that was part of the problem down the road. But this was a year or so before the bar date.

That particular attorney went on maternity leave in February of 2009. She had had the primary communication and contact with the client. As I said, these communications were always difficult because of language and cultural barriers, but she was the primary contact in that regard. On leaving for maternity leave, she handed off the file, as it were, to a second attorney with her firm, also very experienced, been with the firm since 2004, had had responsibility for the Refco claims that the firm filed, hundreds of claims; so clearly a very experienced and careful attorney. He had primary supervision, with many other attorneys at the firm, with the filing, as I mentioned, of over 100 claims for various clients before the September bar date. He started the process with Banesco that had other claims, including against LBI. And after the Debtor announced the initial bar date and the motions back in May of 2009 commenced further communications, alerting

the client as to the bar dates. And he proceeded to continue his review on the file and work on this claim, along with many other claims.

In that regard, he went to the file, which had been established by the prior attorney that had left on maternity leave, and in his review to determine which of the two bar dates were applicable, he reviewed the account statements which had been given to him by Banesco. Those account statements, which we redacted to remove irrelevant information, were from November and December of 2007, and they reflected the two MTN notes and the ISINs for those two notes, but did not reflect the $15 million note on the account statement. In fact, the November statement indicated that the security, and we believe that was the security that was on the account statement, had been {quote} “sold.” So based on his review of the file, based on his review of the account statement, he determined to check the ISINs on the list, the two ISINs were on the list, and made the determination that no filing of a Proof of Claim for Banesco needed to be made by the September deadline.

The problem became apparent as we approached the November bar date. We had a client who had not really focused on the initial bar date, the client seemed to believe that it had securities, MTNs, which were on the schedule and that the earlier bar date did not apply. So when the communications came as to the second bar date, the November 2nd one, the

client alerted the firm that it still held the note, it held it in a different account, an account we did not have a statement for, and requested that we include that in the Proof of Claim.

So when one looks at the factors here giving rise to excusable neglect, it's not any one particular one that one can point to, in many of these cases it's a mailing problem, a back office problem, an inattention problem; those certainly don't apply here. This -- these were attorneys, very experienced, supervised by a partner, who were very tuned into the various bar dates and what needed to be done. But what happened here was that the second associate who was in charge of filing the Banesco claim focused on the account statement, but did not focus on the note, which was in the file, and clearly that was something which fell through the cracks. In the weeks before the bar date, this client -- this attorney, who had been working for many months getting the claims together, communicating with our many clients, was inundated by one client with 20 new additional claims 2 weeks before the bar date, and that clearly took a lot of his attention and energy. There was also the reliance on the account statements which were in the file, which reflected only the two notes which were on the programs securities list. Again, that, I think, was an important factor in giving rise to the failure to file by the earlier date.

We also have here, Your Honor, a unique circumstance which

one doesn't normally find in Chapter 11 cases, and that is the existence of two separate bar dates. And I think that was certainly justified in this case as I understand it, but it gave rise to confusion with a Venezuelan client who is not sophisticated, had not been through the bankruptcy process, and despite our communications, I don't think fully appreciated the importance of the first deadline. And if he did, he would have brought to our attention at an earlier time that fact that he still held this note and that a claim needed to be filed before the September date. So I think all of these factors combined support a finding that there is a good faith reason for the delay and that it was not a matter of inattention or lack of oversight, given the experienced bankruptcy attorneys that were working on this and the fact that timely claims were filed for other clients and for Banesco as well in the LBI case.

When the Court considers the four factors in Pioneer, certainly as to good faith, timeliness and prejudice, I think they weigh very strongly in favor of the Movant. Reason for the problem, I think in every case that is going to be a judgment call of this Court exercising its discretion, which is considerable in this case. Given the facts in this case, I think it's quite clear that we support a finding of excusable neglect. In rereading Pioneer last night, Your Honor, I noted the Court's admonition that the purpose -- one of the purposes of Chapter 11 is to avoid forfeitures by Creditors, and this is

certainly a case where, absent the relief there, there will be a forfeiture. It is a fixed note, it's undisputed, the Debtor originally filed it as such, and it certainly would be a proper use of this Court's broad equitable powers to balance the interests of the various parties here to grant the motion. Thank you, Your Honor.

THE COURT: Thank you, Mr. Seife.

MR. WAISMAN: Your Honor, Shai Waisman, Weil, Gotshal & Manges, for the Debtors. We certainly have a unfortunate set of circumstances, but in bankruptcy we do have procedures, we do have rules, and we do have orders of the Court. Banesco, by its own admission, is a sophisticated party. Its claim as to this issue is in excess of $15 million. It had actual notice of the bar date, and the circumstances leading to its failure to file on time were circumstances entirely within its control. I think when one tries to parse the cases, which admittedly are not easy to parse, the question that the Courts, especially in the 2nd Circuit, the issue that the Courts struggle with is -- or point to most often or the circumstances within the party's control was the failure purely within the party's control or the Debtors or other circumstances outside influences lead to the failure to file a Proof of Claim on time.

In this circumstance, clearly Banesco, a sophisticated party with sophisticated counsel, knew of the existence of its claim, from what we heard, exchanged documentation with respect

to its claim over a year prior to the bar date, and certainly had over a year to begin to think about what the claims are, to review the documentation, file protective claims, which several thousand protective claims were filed prior to this Court's establishment of the bar date procedures, but even subsequently, to review the claims in its file and file its claims in a timely fashion. Certainly there were multiple factors leading to the failure to file on time, but multiple factors doesn't pass the hurdle in the 2nd Circuit.

We heard that perhaps this isn't a circumstance of a party ignoring a bar date. No doubt nobody here ignored a bar date, the parties were well aware of the bar date and failed to comply with the terms of the bar date order. The four factors have been outlined in both the papers, I'm not going to belabor the record, but any suggestion that a bar date is an elastic concept that really doesn't set a clear line in the sand but depends on what the Debtors do subsequent to the bar date, and really, if there's a bar date but a plan hasn't been filed or if claims haven't been largely reconciled, there's further opportunity to file claims is really to eviscerate the entire concept of a bar date. I really don't have much more to add on this score, I'm happy to answer --

THE COURT: Yes, what's --

MR. WAISMAN: -- any questions.

THE COURT: What's the prejudice, Mr. Waisman? The

situation presented by Mr. Seife is one that, frankly, I can relate to, and I bet you can too. You're an associate in a large law firm with a deadline that's hard and fast, and multiple clients, and you're doing the best you can under difficult circumstances to not only deal with this responsibility but competing other responsibilities. And a mistake is made. And there's a language problem with a client. And the consequence is grave and potentially career limiting. But you have a situation here with two bar dates, complicated beyond the bar date process in virtually any other case I can identify as a parallel. In fact, I think this may be the most complicated bar date process that has ever been Court approved. And I'm conscious of the fact that when we dealt with these issues a number of months ago and we established these two bar dates, that there was at least the potential that somebody might make a mistake. Okay, we have a couple that did, that's remarkably few. I don't know how many more are out there who did, but they haven't filed any motions that are on for hearing today, so in terms of timeliness, they're going to be in trouble. How is the Debtor hurt when we're talking about in excess of 64,000 claims with a face amount of $820 billion that are only now being addressed?

MR. WAISMAN: With many thousand having unliquidated components and --

THE COURT: Understood. This is a process that will

be going on for a while.

MR. WAISMAN: Your Honor, but for the grace of God, I am very sympathetic --

THE COURT: Right, we've all been there at one time in our careers.

MR. WAISMAN: Absolutely. Absolutely. The Debtors have a hard time determining, though, who gets the pass and who doesn't. And it is the Debtors' duty to try and get it -- their arms around the claims population and, as part of that, is obligated, unless there are compelling circumstances that were outside of a party's control, to contest the late -- filing of late claims. The prejudice, the prejudice is, I think as Mr. Seife indicated, the argument here is, well, there's a bar date, but bar date really doesn't end with the actual date, September 22nd, it continues. And as long as you make a request to the Court or the Debtors prior to and at some ever-expanding set of circumstances filing of plan -- we're only going to have an outline in March so there's been a suggestion perhaps people can continue to file claims. Is it the reconciliation of claims? How many? Is it largely reconciled, some reconciled? Bar date is not an expansive concept, it is a bar date, it is the last date to file claims when they are --

THE COURT: Yes, but what's the prejudice today? What's today -- what's the prejudice --

MR. WAISMAN: Today?

THE COURT: -- to the Debtor today?

MR. WAISMAN: The prejudice today is that we have three requests seeking to file claims in excess of $330 million, and some of those requests relate to securities that are not solely held by the Movants, but held by countless other parties -- could be a few, could be several hundred -- with face amounts exceeding an additional 50-plus million dollars. The prejudice, I think, has to weighed against the reason for the delay. That's the balance here. And perhaps it tips today towards no prejudice, but certainly if one were to look to the reason for delay in the case of Banesco, it was fully within Banesco's control.

THE COURT: Okay, I think what I'm going to do, since there are three similar motions relating to the bar date -- one may be slightly different in terms of its fact pattern because it doesn't involve the second program securities date, but I'd like to hear everybody's plea for mercy at the same time --

(Laughter)

THE COURT: -- and consider these as a package.

MR. WAISMAN: Very well, Your Honor, thank you.

MR. DUNNE: Your Honor, would you like to hear from the Committee now or after we hear from the other parties? Either way is obviously fine --

THE COURT: I'm prepared to hear from the Committee

now.

MR. DUNNE: Your Honor, let me say at the outset that this is the reason why I detest filing Proofs of Claim for clients, because no one ever pats you on the back saying that was a great Proof of Claim you filed, and it's all downside risk when something like this happens and you're standing in front of the Judge hoping for mercy. And there was a sinking feeling in my stomach when I heard the facts of this. And I think we struggle a lot with what Mr. Waisman was saying. See, I think we all agree that the bar date should be sacrosanct; you have to draw some lines somewhere. The question is where. You know, did we really mean September 22nd, or is it really the second bar date, or is it the Second Omnibus Hearing after the first bar date? At some point it has to be untimely.

And we're more concerned about the macro effects of this, because the benefit of the bar date, and we saw it today, is that Mr. Marsal can put a number up there which is the outside limit of the claims universe. And after the bar date, that number's supposed to go in one direction, it's supposed to go down as we start winnowing through the Proofs of Claim --

THE COURT: Well, it's going to go up and then it's going to go down because it's going to go up to maybe a trillion and then it's going to go down.

MR. DUNNE: There'll be some other -- you know, there'll be some other assertions, but the bar date is supposed

to provide some comfort that people who were put to the task of filing Proofs of Claim have done so. There are others where they could still file claims as we resolve derivatives and the nature as they move one way or the other, but the prejudice, Your Honor, is precisely that. You saw Mr. Marsal say we may only have a plan outline first quarter of March. Who's to prevent another claimant from saying, well, we established the precedent on November 18th that the bar date is not absolute and categorical, that we could have missed it, even though we admit that we knew about it and there was a, you know, lack of communication with the client, but we succeeded in filing 100 other Proofs of Claims, just not this one. And in isolation, any one request doesn't really move the needle a whole lot on the claims universe, but we have to draw the line somewhere, and the Committee's position is it should be at the bar date. But if Your Honor's inclined to grant any of the relief today, we'd suggest that Your Honor make it clear as to Your Honor's view as to timeliness -- you know, maybe it was had to have been filed by the second bar date -- so that we can use that going forward so we're not constantly here for the next year, you know, until we're making real determinations as to class treatment and size of the claim as to prejudice. That's really the Committee's position, Your Honor --

THE COURT: Okay.

MR. DUNNE: Thank you.

THE COURT: Thank you. I was going to hear from others but if you want --

MR. SEIFE: Well, just two --

THE COURT: -- to --

Mr. SEIFE: -- two brief points, Your Honor --

THE COURT: -- follow up on your client, that's fine.

MR. SEIFE: The first is I understand why Your Honor wants to hear all three but -- as a package, but I think this is a particular motion where facts and circumstances do change from Movant to Movant.

THE COURT: I understand, and just because I'm interested in hearing what other people have to say on the subject doesn't mean that I'm putting everybody in the same bucket.

MR. SEIFE: I appreciate that, Your Honor. And two other brief points. One is Pioneer clearly envisions granting relief in circumstances where events are within control of the Movant, and I think counsel for the Debtor perhaps overstated what the rule and what Pioneer says. And I think this Court, I echo what the Committee's counsel said, can certainly set a bright line which just opens the gate a crack for the -- those that have filed in good faith by the second bar date and made a motion within that period. Thank you, Your Honor.

THE COURT: Okay, thank you.

MR. LABOV: Good morning, Your Honor. Paul Labov of

Edwards Angell Palmer and Dodge on behalf of Pacific Life Insurance Company, and I appreciate you taking the time in putting these together, so we don't have to reiterate Pioneer and the Second Circuit decision in Enron.

Pioneer, much like Venesco (ph), Your Honor, did file by the second bar date. This was not a securities issue. This was a derivative contract. The first bar date, September 22nd; second bar date, October 22nd, we have confirmations, obviously, of the filing of the derivative contract questionnaire and the guarantee questionnaire by the second bar date, along with this motion, as of the second bar date.

And the only thing that was not filed, was this one form, one piece of paper on September 22nd, which really does not include any of the back-up to begin with.

We heard Mr. Marsal today talk about the 820 billion out there --

THE COURT: Well, the one piece of paper you just showed me is the proof of claim itself.

MR. LABOV: It's the actual Form B-10, proof of claim, Your Honor.

THE COURT: That's kind of an important omission.

MR. LABOV: It is. But it was filed by the second bar date, along with everything that the Debtor needs to evaluate these claims. Because as Your Honor may recall, the actual bar date order does not require any of the creditors to file any of

the back up, along with -- in fact, I think it requests them not to, along with the B-10 form.

And so in analyzing these things, it really wasn't until the second bar date that that could happen. And again, not to belabor the point, two issues on the brief in response, Your Honor, was the flood gates argument, and of course, the Enron decision, which talks about inadvertence, mistake, whose fault was it.

THE COURT: Why don't you talk about the particulars of the mistake that was made here and why it was made.

MR. LABOV: Yes, Your Honor. In this particular case, again, Edwards Angell had filed dozens of proofs of claims for various clients, Pacific Life being one of them. Pacific Life had been filing some of their own proofs of claim for various matters, but in this particular case, because it was -- because at issue is an Lehman Brothers Holdings, Inc. guarantee of a non-debtor Lehman Brothers International Europe derivative contract, and the dual nature, the international nature of the case, one clerk at Pacific Life thought, well, this is an LBIE guarantee, so why wouldn't the LBIE party file it. And the LBIE clerk said, well, but it's a LBHI guarantee claim, so why wouldn't the American counterpart file it. And that was the nature of the miscommunication there.

And it was only determined once we -- once we determined that the derivative contract questionnaire and the

guarantee questionnaire had to be filed, is when they caught the mistake which was, of course, prior to the second bar date, everything was filed, but for the Form B-10 prior to the second bar date.

THE COURT: But the second bar date didn't apply to this plan.

MR. LABOV: The second bar date applied to this claim, it was a guarantee claim, and the derivative contract questionnaire --

THE COURT: Well, wait. How many bar dates do we have? We have the November 2 bar date --

MR. LABOV: No, no.

THE COURT: -- this is inapplicable to your situation?

MR. LABOV: Yes. Yes. Different -- still two bar dates, different type of claim. Secure -- derivative contracts had two bar dates, with September 22nd for the Form B-10, and had October 22nd for the derivative contract questionnaire.

THE COURT: I remember how that came about. It wasn't really to change the September 22 bar date, as much as it was to deal with some of the concerns expressed by counter parties, that compliance with the requirements of the derivative questionnaire would be burdensome, and that they needed more time to deal with that. So it was never a second bar date. There was one bar date, --

MR. LABOV: Right.

THE COURT: -- which was September 22nd, and there was a second bar date for the program securities and that was November 2.

So I think it confuses the record to talk about the filing of the questionnaire and supporting material as if it is a bar date. It's a deadline, all right, and it might in fact defeat your ability to get paid, but a bar date it isn't. I don't think. Tell me if I'm wrong in that.

MR. LABOV: Well --

THE COURT: Because I don't think this is a case with three bar dates. It's a case with two. That may be one too many, but it's a case with two.

MR. LABOV: Well, it is a deadline for sure, Your Honor, that these --

THE COURT: I acknowledge it's a deadline.

MR. LABOV: Yes. Yes.

THE COURT: I'm confused, and I think the record is confused, when you suggest that it's a second bar date.

MR. LABOV: Okay. I apologize for confusing the record, Your Honor. I would just add though that the substance of the claim, all along, the back -- whether it was for creditors who said we need more time to put our material together, or it was for whatever other reason, the substance of that claim. The Debtors could only begin to understand and look at those claims as of that -- we'll call it the second --

we'll call it the deadline for the derivative contract questionnaire and the guarantee questionnaire.

So really, in form and substance, there is no difference. Now had this guarantee questionnaire not been filed by September 22nd, I agree, I think we'd be in a different spot here; things start to pick up and move forward. But when the substance needed to be filed, it was just a substance. When the substance needed to be filed, it was filed timely. It was the form that did not include the substance that was not intended to include the substance that was not.

THE COURT: Okay.

MR. LABOV: Thank you, Your Honor.

THE COURT: I understand.

MR. TECCE: Your Honor, very briefly, James Tecce for the committee. We're handling actually the Pacific Life motion, just for the record, we filed a joinder in the Debtor's objection to that, to that motion. I just -- not by way of rearguing any points that have been made so far by Mr. Donner (phonetic) or Mr. Weisman, but I just want to make an observation.

The Enron Corp. case which has been discussed this morning quite extensively, specifically the case of Pacific Life, I think provides some very considerable instruction. It's a significant decision, not only because it reaffirms the Second Circuit standard on Pioneer, and the hard line the

Second Circuit takes on Pioneer and the focus that it places on the reason for delay factor was it in control of the party's factor, that Enron says that that is the critical factor, that is, of the four, that is the most important one.

I think looking at the Pacific Life motion within the context of Enron and the facts in Enron and the facts of cases discussed in Enron, it's actually quite instructive. In Enron, there was a rejection damages claim that was timely filed by the creditor. The issue was whether the creditor could have relief from the bar date to file a claim against Enron North America, the parent company, that it suddenly decided that it should've asserted. And the argument was that it was so focused on the rejection damages claim that it just didn't get around to filing a parent company claim.

Enron also looks at a case called Silvanch (phonetic), which is a Second Circuit case as well. And that's a case, and that's not necessarily a bankruptcy case, but it's a failure to timely file a notice of appeal, because counsel asked counsel for the opposing party what the deadline to file was, and he was given a wrong answer. So there was sort of a misunderstanding, a miscommunication there.

Pioneer involves a set of circumstances where the Court said that the bar date notice was actually just appeared in a meeting of creditor's notification, and therefore, they found excusable and neglect in those circumstances. They also

discounted the fact that the attorney in question was changing firms. But the point being that if you look at Pioneer and Enron and Silvanch, and you look at Pacific Life, you really just have a circumstance where one internal controls within a creditor have failed for one reason or another. So I think that it's a different set of circumstances.

With respect to prejudice, Your Honor, I think Enron again is important on this score, because what Enron says is, the amount of the claim at Enron was $12 and a half million, and the claims pool in Enron was $900 billion. And that's actually not dissimilar to the facts as they're unfolding in this particular case.

But the Court said, first of all, that $12 and a half million is not a small amount of money, but secondly, you can't consider that claim, the $12 and a half million in isolation. You have to consider what impact it may have, will similarly -- will claims be filed under similar circumstances later, so you can't really just consider the 12 and a half million in isolation.

I think with Pacific Life, that is certainly the circumstance that people may argue, well, we had internal problems. The notice was stuck in somebody's in box, and we suddenly discovered it. I think there's a real risk of a flood gates -- of the flood gates being opened to similar mistakes that have -- were made, and those were mistakes caused the

party to fail to meet the bar date, so prejudice and flood gates, in that particular case, Pacific Life, are especially important.

THE COURT: I don't really see the flood gates argument that you've just made. In a situation where there has been compliance, at least with the deadline for providing detail, but noncompliance with the deadline for filing the proof of claim, I can't imagine a whole lot of parties falling in that category. It's a drip. I don't think it's a flood.

MR. TECCE: Well first of all, Your Honor, I don't think that we know the answer to that just yet. We don't know how that argument can be --

THE COURT: It's easy. I can control it.

MR. TECCE: Well --

THE COURT: It's really easy. If anybody shows up late, they're probably going to be out of court because they're late.

MR. TECCE: Right. But by the same token, the procedures did -- that were approved by the Court did articulate what had to be done. The proof of claim form had to be filed, it was not --

THE COURT: Very confusing. Very unusually confusing, highly complex, multiple dates when things had to happen, we knew it when we did it. This is not one date or you're out. This is multiple dates or you're out.

MR. TECCE: Your Honor, I recognize that there are multiple dates, but the failure in this case is to file a proof of claim form and that is something that happens in every bankruptcy case, and that is typically the procedure in every bankruptcy case, is to file a proof of claim form.

THE COURT: Absolutely. And one of the things that I remember loud and clear that I said, although I may remember it better than I actually said it, is that, I cared about there being a bar date procedure that included only absolute dates. One of the things that I cared about, was that there not be a process in which people, particularly with respect to derivative contracts, could talk in terms of substantial compliance with the questionnaire. I wanted there to be real bar dates in the case, including those that related to the derivative contracts and the questionnaire. We have that. I intend to enforce that. I don't think a flood gate argument makes sense if I'm vigilant.

MR. TECCE: I understand the point, Your Honor. I guess the last point and I'll leave the Court with this, is that the -- as we understand the thrust of the mistake in this case, it's that internally at Pacific Life, one clerk thought that the European issue was being handled by the U.S. clerk, and the European clerk thought that the European issue was being handled by the U.S. clerk and vice versa, and that is something that I think is unique to Pacific Life and is not

endemic of the notice of procedures that were established in the case.

THE COURT: They made a mistake.

MR. TECCE: Thank you, Your Honor.

MR. MOLONEY: Good morning, Your Honor, Tom Moloney of Cleary Gottlieb Steen & Hamilton LLP on behalf of PB Capital, and I almost should just rest on the arguments made by the other two parties, because our client really falls squarely within the exceptions each one of them has urged, in that PB Capital did, which has an EMTN note, actually did file it's regular proof of claim and it's guarantee questionnaire before October 22nd, well before the November 2 deadline, once they had discovered to their great chagrin, that they were not included on the list.

And I think, Your Honor, because I think the law has been generally well argued so far, I'd like to focus on the facts, if I may.

THE COURT: Please.

MR. MOLONEY: And I've prepared a small hand-out.

THE COURT: You've got to be kidding.

MR. MOLONEY: Which basically is a time line, that kind of helps go through the facts. If I can approach the bench, Your Honor.

THE COURT: You may.

MR. MOLONEY: Thank you, Your Honor.

THE COURT: I don't know what it is, but okay.

MR. MOLONEY: Very simply it's just a summary of what happened here from PB Capital's perspective. And Your Honor will note that the --

THE COURT: Well, let's be clear, this is not an evidentiary hearing.

MR. MOLONEY: No, this is just a demonstrative. Everything here is in evidence already in the declarations. I don't think anything here will be controversial, and I've attached the exhibits which are in evidence that I'm relying on. So this is simply demonstrative in aid of argument to make it clearer what happened.

THE COURT: Okay.

MR. MOLONEY: If it is helpful.

THE COURT: Well, we'll find out.

MR. MOLONEY: Okay. We'll find out, Your Honor.

THE COURT: It may be that it's going to prolong an otherwise simple process, but let's go forward and see how far we get with it.

MR. MOLONEY: Okay. So essentially on May 26th, they file the bar date order. On June 12th, our client, PB Capital, files a joinder to objection filed by Barclays to one aspect of that order that dealt with the derivative procedures and questionnaire. And PB Capital is a subsidiary of the former German post office, and so its parent company had many of the

same claims it had as well. So this was, even though they're a U.S. company, they're also part of a German/U.S. affiliate.

At the June 24 omnibus hearing, which -- it was as crowded or more crowded than this one, the Court asked the parties to work out something, to deal with the derivative issues. I know our firm was part of that group that worked on that. But a separate issue arose, which was the June 25 publication by the Debtor of their master list of securities.

That then raised the issue for some clients, but actually not for PB Capital or its German parent, who both had these notes. They both had EMTN notes with ISIN numbers, both part of this $100 billion program issued by Lehman Brothers, but because they held them directly in large amounts, they didn't have the issue of who has authority to file a proof of claim, it was (indiscernible) other people or about retail holders, that wasn't their issue.

The objection that we filed was not on their behalf. It was on behalf of another client, the BBBA client, who had this issue with retail customer's authority issues concerns, and that client filed its objection on June 27, which PB Capital does not join. That's not their issue.

We're part -- another group of Cleary lawyers, particularly a partner of mine who's on the phone from Paris, Andrew A. Bernstein, who's actually worked on a lot of these EMTN programs, was part of a working group, not really to cause

a problem here, but to try to come up with what they thought was a constructive solution to deal with -- how to deal with these securities. And that does result in an agreement that was explained to the Court on the record on June 29.

And that -- and at that point in time Your Honor will recall, the final language that was going to be used for the program securities note was not worked out. You had a lot of -- there were a lot of people here raising it, and somebody has a hand-out with my additional notes on this, I hope it's -- it doesn't matter, I remember what I said.

Basically, one of the parties here was the trustee for the BB Netherlands entity or his lawyer was here, who said to Your Honor, you know, among other things -- everybody calls it the EMTN program, even when Mr. Marsal was up here a moment ago, when that slide came up on the screen, he said program securities, EMTN programs.

He said in addition to this $100 billion program, there's also Italian notes, there's Swiss notes, and German notes, and they should be included as well, and there was Ms. Fife (phonetic) consulted for a moment, and said, yeah, that makes sense. And then so if you go for this, you go for a drafting process whereby basically that happens.

The order gets drafted, the basic program, which was a EMTN driven program, gets drafted to include these other notes, and the Debtors send around a first draft of something, which

refers to notes issued by their affiliates and my partner, as well as separate counsel says, it's not -- you know, this program, the way it works, this $100 billion program is that Ebert LBHI, which is a Debtor, can issue the notes directly, these structured notes, or it can issue them through a financing vehicle in the Netherlands and guarantee them. And it's at its option, so the program can't be limited to the Debtor's affiliates. You need to change the language to say, Debtor's affiliates, which would include LBHI, and potentially any U.S. affiliate and its affiliates outside the United States to pick up these special purpose vehicles in Europe. That was the reason why it was drafted that way.

And it was also changed to make sure that it was clear that that -- there were a number of holders who were not retail noteholders, and the order was changed to reflect that. I think Your Honor's concern was, that for the genesis of the program, was retail noteholders. But I think Your Honor understood that this would apply to categories and securities that might include other holders as well, including institutional holders, not just necessarily run-off securities for sophisticated parties, would handle the issue themselves.

But once you include in the category of a program security, and once you made an exception in the bar date for program securities, it didn't really matter at that point whether you're (indiscernible) or not, and that change is made

in the bar order as well. So all of this is going swimmingly well from our client's perspective, and the language is put in, making it clear that the list is supposed to include the Euro medium term-note program, which is what the whole purpose of this thing was.

The Debtors add in some requirement at the last minute about blocking numbers, which caused people to scramble, they figure well, that's not going to be a problem, little do they know, and on July 2nd, the order comes to Your Honor, and you entered a bar date order. And it has two -- the language which we quoted on page six, the first paragraph, which they rely on, the second paragraph for which we rely on, but it is somewhat confusing.

The first paragraph clearly appears to define the Lehman program securities as whatever happens to be on a website on July 17th. The second paragraph talks about the method by which it's supposed to be established and it clearly says, these particular categories and securities are supposed to be on the website. And it says there's an initial list that goes on July 6th, which the parties were to work in good faith to try to elaborate.

And I believe, based on spending a lot of time investigating this after the fact, I wasn't involved at the time, but after the fact, that there's at least a very good faith effort by most -- everybody in my firm, I think by a lot

of parties, that this process was to find out what other securities were similar to the ones that we had already defined in court as being on the list.

It was not anyone's fault whatsoever, that you would take any securities off this list, and it's kind of a paradigm thing, when you have this paradigm of a world, you don't see anything inconsistent with that paradigm, it doesn't occur to you. It just does not occur to anybody that securities would be taken off the list.

And if you -- we went through the list, and in fact, you know, there were -- out of the 4,000 securities single page on this list, they added another 3,000 securities, this is on page nine, and they only took off eleven; four of which are held by our client.

So it wasn't the idea that this process was simply one of adding and not subtracting, it wasn't just our hallucination, I mean, that's what this process was involved in, and about people constantly suggesting adding things. I'm not saying there was any bad faith on their part whatsoever, because these securities that we were holding were very anomalous by PB Capital, very anomalous securities. Because the German parent was in the program, they bought the securities in Europe, they wanted the U.S. sub to have some of the securities, so they're privately placed, so they have an ICSN number, they are EMNT note securities, but they do not

have -- they were privately placed.

So the Debtor included them on the July 6th list of our securities. Our client looks at them, our client's very diligent, he's here, Mr. Gregory is here, and obviously in terms of career damage and harm, this is horrible for him and for others, frankly, Your Honor, this is a scary kind of motion to argue. I didn't sleep well last night.

But in any event, he --

THE COURT: He's --

MR. MOLONEY: -- says I want to get started on this, show me a list of who's on it, and he says, great, we made the July 6th list, we don't need to go back to the Debtor. If the Debtor hadn't included it on the July 6th list, we would've said, PB Capital would've said, either called them, and said why isn't it on, and they would've known, and they would've filed the right form. Or they would have said, we don't care, okay, we'll file the other way. Because the record -- it's in the record that they diligently filed all kinds of claims, all kinds of questionnaires, because there are a great number of claims in this proceeding.

And, you know, they spent a lot of time trying to comply in very good faith with this order. So he looks at it, he goes forward. They appoint it to an e-mail sent by a junior lawyer at Weil, Gotshal, to a junior lawyer at Cleary that is somehow putting us on notice that U.S. securities were not

eligible for that list. I think if you'd look, we've put in a declaration for that lawyer, who said she did not take that as a take-away.

If you look at a fair reading of what the e-mail says, it simply says, that one of the securities of the client is not PB Capital, just to add to the list, which was not one of those four categories of securities, was not on the EMTN note, was not the Swiss note, was not the German note, and was not, whatever that fourth category was note, but they asked whatever could be on the list, and the response back was, this is a 144 security issued to you investors, and therefore, does not belong on the list.

She didn't appreciate that meant that they were going to change the initial list. She didn't appreciate the fact that that meant that they thought the EMTN notes would -- that had that characteristic would not be on the list. And I don't believe the person who sent the e-mail appreciated that either, because there's an e-mail we have in the record from Mr. Coleman when he spoke to Mr. Bernstein, several months later, and when he finds out he can't get a blocking number, and he can't figure out what the problem is, wants to know what to do. Mr. Bernstein says, gee, I was surprised you can't get a blocking number for the securities, let me go look and find out what's going on here. He doesn't just say, what are you talking about, you've got a U.S. security, you're not on the

list.

So, you know, I think that they're playing fast and loose with that e-mail. It certainly did not put us on notice. Clearly did not put PB Capital on notice, and I don't think it's a fair reading of the e-mail.

So that gets -- you know, on August 10, PB Capital learns there's a problem of ten of these blocking numbers, they proceed to fill out all the other forms on September 6th for their ERISA claims, and their link note claims, and they fill out the ISDA (phonetic) questionnaire, and they finish that process, and they go forth to work some more on these EMTN notes, and I think that the blocking problem can be solved just by transferring the note they have with DTC to the same depository that's holding their parent's note in Europe.

They get a blocking number, it's fine, and they discover, wait a second, you can't transfer it here, it's not Euro clear eligible to deposit. That's when they contact Weil, Gotshal, that's when they learn the notes was deleted from the list. As soon as that happens, we call them up, we wait until we can talk to the partner in charge who's away for a week, to see whether or not there's a way that we could -- an exception can be made for these circumstances. That doesn't happen.

So we immediately file the proof of claim and the guarantee questionnaire as a regular proof of claim, and as an EMTN proof of claim. So we filed the belt and suspenders, you

know, obviously after September 22, but before the October 22 questionnaire deadline, and well before the November 2 bar date.

So we have a very, very narrow set of circumstances, in terms of prejudice here, in terms of people who actually had some reasonable basis for thinking they were on the list, and maybe should've been on the list, but who -- and by whom nevertheless complied with the -- that court deadline showing good faith.

And I think -- Your Honor, I've looked at all these cases, I've looked at the Second Circuit cases very closely, I looked at Pioneer very closely, and the only legal argument that I would add to what's been made so far, is that if you look at why the Supreme Court granted certain Pioneer, it was to resolve a dispute in the circuits. There's a footnote in Pioneer that says, “We grant cert because there are a number of circuits that say that the standard is it's beyond your control.” And they decided that was not the standard. That the standard would be an equitable standard, an elastic standard, grounded in Your Honor's discretion, as to when to grant excusable neglect. And the Second Circuit decisions, the more difficult ones, the ones that talk about, you know, violating a clear rule, they almost always deal with an appeal under Rule 4(a), or under some other appellate rule.

And one of the characteristics of an appeal under

Appellate Rule 4(a) is that you only have 30 days to file the appeal. So three of the Pioneer factors, are always met. You know, in that context, and under those circumstances, of course, let's look, they're not going to let somebody say they don't understand Federal Rules of Civil Procedure. You know, that is not going to get you a pass in this court, in terms of the appellate deadline.

I think when you're dealing with a complex bar date, such as the one we have here, and good faith efforts at compliance that that clearly meets what the Second Circuit has said, even under their most strict iteration of what the test is. So thank you, Your Honor.

THE COURT: Thank you.

MR. WEISMAN: Shai Weisman for the Debtors. I'd like to address PB Capital, and then for a moment, just go back to Pacific Capital. Before I go there, a point of information, Your Honor, not arguing the flood gates issue, but while Mr. Moloney was making his presentation, I was able to confirm that the Debtors believe that to date, at least 1,200 late claims have been filed.

We get back to what I think Mr. Dunn was illustrating for the Court, which is where are we going to go draw the line in the sand? When does this stop? If there's a late claim, and apparently e-mails between junior associates, we have an exception. I just illustrate the fact that we're going to not

conclude here, we already clearly know that there are 1,200 other folks who we're going to have to deal with, who are going to be arguing excusable neglect, and I suspect that claims continue to come in.

THE COURT: Well, I expect that the procedural context will be that those claims will be the subject of an omnibus motion to disallow them all, because they're late. And in the process of that effort, since no motion was filed to permit a late claim, if someone says, please I'm different, I presume that's what they'll say, and if they really are different, like the Soldiers and Sailors Act, where people are legitimately incapable of meeting a deadline, the system is designed not to be blind. It's designed to, where appropriate, make exceptions. But I'm assuming that of the 1,200 there may be a handful of exceptions, if any.

MR. WEISMAN: That's yet to be determined, but I do point out --

THE COURT: Obviously, to be determined. I'm not prejudging anything.

MR. WEISMAN: I know and very much respect Mr. Moloney, so the insinuation that someone's playing fast and loose, I'd like to address first. Because in no regard, whether it was with the initial promulgation of these procedures, where I thought everyone certainly acted in good faith and working very hard to come to Your Honor with a

consensual order, and since that date, I don't believe anyone has played fast and loose.

If Your Honor recalls, the reason we had an initial EMTN list and a final list was the Debtors didn't have a lot of the information, and needed to put something out into the public space to receive comment on, and be able to revise and get to a final form. In fact, from entry of the bar date order to the formulation of the initial list, we had four days. In four days, the Debtors put over 3,700 securities on a list. There was no ability to verify any of those securities. And the Debtors then had a week, not only to verify the securities on the initial list, and add or remove, because there's absolutely no prohibition, and in fact, there were discussions that the initial list would be subject to complete revision.

And in that week, to add another 3,000 securities, and the Debtors acted and continued to act in good faith, and in fact, of the 3,700 securities on the initial list, there's a security that we were asked by the Cleary firm to include, that we didn't have time to research. And when it came time to the final list, it's on the final list, and it's on the list today, and that security has nothing to do with Lehman, and has caused an entire uproar in Germany, where it's a security that relates to some other bank, and we haven't received authorizations, despite repeated requests to remove it from the list, no one's willing to step forward and say, it was a mistake, and you can

remove it. But because it's on the final list, we can't remove it, and we've left it on the list.

The reason, the clear reason we removed these specific securities from the list was, it was in everyone's contemplation that we were going to provide additional time for the retail holders who did not speak English, and were not in this country, to be able to receive notice, to obtain advice, and to file a claim. And we removed the word retail, because a number of the banks that act as the account holders said, well, we may want to file protective claims on behalf of the holders, and if you put the word retail, that may preclude us.

It was a definition. It means nothing. But that is the reason why we removed the word retail. There are actually very few facts that really matter to this issue, and I submit that what somebody in Paris, who's on the phone may think the Court's procedures meant is of little relevance. When we look at the procedures themselves, the bar date order itself, as it relates to Lehman program securities, on page 12 as highlighted in our pleadings, the lead in to the entire program said, the following procedures apply to the filing of any and all claims against the Debtors, arising from securities issued by the Debtors or their affiliates outside the United States, solely to the extent identified on the website, under the heading, Lehman Program Securities, as of July 17 at 5:00 p.m."

It then goes on to say, we'll post an initial list,

people will work together, we'll come up with a final list. No prohibition on removing securities, no prohibition on adding securities. We worked in good faith. We came up with a final list.

Parties then, under Your Honor's order, had an opportunity to come back to court on an expedited basis, if they thought anything nefarious was going on, or they wanted to press an issue. Nobody, rather surprising to us, and I think based on Your Honor's comments at the conclusion of that hearing, it's quite surprising that nobody came back, but I think that's a measure of the good faith with which people approached this subject.

And Your Honor, in fact, in the record of that hearing noted that these procedures are meant to apply to retail holders. On page 83 of Your -- of the transcript, Your Honor made a very specific comment as it related to this program. “If they're sophisticated holders, they're not entitled to any benefit. No offense to sophisticated holders, but they can take care of themselves,” and that was an indication of who gets the benefit of the additional time, and who has to file by September 22nd. And, in fact, Your Honor, the very person that our junior lawyer communicated with at Cleary, was the attorney present, according to the record of that hearing, present for PB Capital at the bar date hearing.

So the procedures were clear. Your Honor made, I

think comments on the record, that summarized the agreement between the parties before Your Honor that day, and with that, the Debtors published notice of the Lehman program securities bar date, both on the website, and in written form, and in each instance, and as set forth in the exhibit to our objection, made clear that securities can be removed or added between the initial and the final list, and one is to only consult the final list. And the only way to get to the final list, is to read that prohibition within that section of the Debtor's website and click through to receive a PDF of the final list.

And I think what happened here is, if we're going to get down to the facts, which I think is the issue that determines each of these requests for excusable neglect, the fact is, PB Capital checked the initial list, didn't comply with Your Honor's order, didn't pay attention to the words in the notice or on the website, and just never came back and checked the final list.

Another matter, just like Pacific Capital, entirely within their control, something that with some oversight, with some double-checking that you think people would employ in the case of a $270 million claim, would easily have been avoided. We spent a lot of time kind of looking at the bar date order, and if you look at it in a certain light on a certain day, perhaps it says that the final list was supposed to include the EMTNs, that's just not a fact the parties completely

contemplated that this was going to be -- these procedures, the benefit of extra time was to apply to the individuals likely not to speak English, and held in retail form in foreign countries, PB Capital is not one of those parties.

As to Pacific Capital, again the facts, I think determine all of these. You had two employees charged with the filing of a proof of claim. The claim here, in excess of $45 million, some oversight, some caution would've led, I think any reasonable party to have your two parties filing claims sit down and coordinate on a list of claims, and determine who's responsible for filing what claim. That did not happen.

It appears these two employees, the only two employees within the organization charged with filing claims never actually coordinated as to the claims that the entity had, and who was responsible for filing them, and they now come back and say, we didn't employ proper procedures or oversight, and we would ask to be considered on a late basis. Again under the Second Circuit's guidelines in Enron, neither of these two circumstances amount to excusable neglect in the Debtor's eyes.

THE COURT: Okay. Thank you.

MR. WEISMAN: Thank you.

MR. MOLONEY: Just very briefly in response, on request of PB Capital, Your Honor.

THE COURT: Okay.

MR. MOLONEY: I think I'd like to make three points,

Your Honor, if I may. The first is about the shortness of time. That was a particular concern of ours at the time, that in this four-day period, we'd have to -- and this is in Mr. Bernstein's affidavit, and in (indiscernible)'s affidavits, and it's attached as an exhibit of an e-mail he had after a conversation with Weil, Gotshal, this is a very short period of time, how are we going to do this, I said it's no problem, we're just adding securities to the list, and that contributed to the understanding these people had of what the process was going to be, from that -- moving forward from that June 29 hearing, when we understood that the EMTN -- this was an EMTN no program, and that they were going to add securities, not that we were going to be taking any away.

So that shortness of time, we did not worry about that because we were told by Weil, Gotshal and it's in the record, that this was to add securities.

Second, there's no question that they included the security on the July 6th list. So if it was so obvious that this security should not have been on the July 6th list, why did the Debtors include them. If they -- if that was a mistake, that was a mistake that caused our mistake, and in the O'Brien case, the Third Circuit said, “if it's a mistake by the Debtor that contributes to the harm here, that needs to be weighed into the equitable balance.”

But a more fundamental mistake happened, if a mistake

happened, which was that once they decide to delete just these very few securities, they could've given us actual notice. They could've done that for the DTC system, because they had the ICS ISN system, they could've done what they did with the master's securities list, what they put on their website in bold language, that there have been deletions from the first list we circulated of this. They did neither.

So that this is not a circumstance where there's absolutely no blame for our client's confusion, if in fact, the Court decides not to simply reform the order, to include these securities. So those are the points I would make.

One final one, Your Honor, is that we did look at the bar, at people who filed proofs of claim, under the program securities list, and one of the people who signed a proof of claim was Mr. -- the owner of Berkshire Capital, Warren Buffet. So a lot of sophisticated people read that order in a naive way that my partner in Paris read as it applying that once you're on this list, you were covered, whether or not you were a retail investor.

I think if a fair reading of Your Honor's comments at the hearing, is that you did not say what they said you said, what you said was that you're looking to programs that predominantly cover retail people, but you weren't -- I think Your Honor understood that once you included a program on the list, that was what people were not going to try to make a

differentiation, whether they were retail or not, in terms of filing a claim in that timeframe. Thank you, Your Honor.

THE COURT: Thank you. At some point this ends.

MR. WEISMAN: Hopefully, after I speak. Just kidding.

THE COURT: Actually --

MR. WEISMAN: Just to respond briefly.

THE COURT: -- it ends after I speak.

MR. WEISMAN: Then it always ends, that's for sure.

Mr. Moloney says it's in the record that Weil, Gotshal said we're only going to add securities that's, as far as I can tell, not in the record, just not a fact. Whether it was a mistake to include the initial security and that's what led to PB Capital's mistake, it was a mistake. That was part of the process that was the give and take that we had all agreed we would engage in to get to a final list. That can't be said to be a mistake.

That we had to give actual notice, again, Cleary spear-headed the efforts here, and -- to come up with a bar date. There is no requirement to give actual notice, as to additions or deletions, and despite that, we did clearly in the website as a gating item, to getting the list, say that you have to consult the final list as of the 17th, not before. So we actually did take the step. And the final point, you know, Warren Buffet, I'm not sure that's in the record, I'm not sure why it's relevant, but if we missed it, and we couldn't

research the 6,700 ISNs on the list, we live by that, and they are on the final list, and if Warren Buffet had a right to file a claim, because we missed it, and didn't respond to delete, because it was somehow inappropriate, I have no idea. But there was a final list, we live by the final list, but that's really what everybody has to live by.

THE COURT: Okay. This is a very troublesome issue, not only for the clients involved but for the law firms involved, and I recognize that.

I'm not going to decide it today. I'm going to take it under advisement. And I'm going to take a hard look at the declarations that have been submitted in support of the positions that parties assert constitute grounds for excusable neglect. I'm also going to consider the Pioneer factors, and what has been described as the elastic discretion that I have to deal with this issue. But I will be mindful in the process of what we are colloquially calling the flood gates argument.

I note that based upon the report that was delivered by Mr. Marsal at the beginning of today's hearing that on page 33, Lehman Programs Securities, EMTN, amount to almost half of the claim volume in this estate, 48 percent by number of claims, but 11 percent by claim dollars. I'm not sure if that's a significant statistic, but I'm simply looking at the breakdown by Alvarez and Marsal of the claim types.

I don't know to what extent there is a different flood

gate applicable to different claim types, so I'm going to give some thought to that as well.

You should know that I'm also going to be considering whether or not, notwithstanding the extensive record made today, as it relates to excusable neglect, there may be a need for an evidentiary hearing, to the extent there's a contest on that. I'd simply like to know, for purposes of my review, whether or not the Debtor or the committee takes issue with the assertions of fact that support the grounds for excusable neglect on the part of each of these three claimants, who are seeking relief from a bar date order.

If not, then I'll simply accept their statements of the reason for the problem as being true and correct.

MR. WEISMAN: Your Honor, for the Debtors, certainly I don't think the Debtors have any issue with the facts set forth by Venesco or Pacific Life.

The PB Capital response submitted numerous additional affidavits and supporting documentation, and because sur-replies are not permitted, absent prior approval of the Court, we did not submit a subsequent reply and contest, as to some of the assertions in there.

We don't want to belabor the record. I'd appreciate an opportunity to review those and to the extent we need to, submit a limited reply to those, or request an evidentiary hearing, that we will immediately advise chambers within the

next day. But if not, we would also rest on all the pleadings that have been submitted, to the extent we can get comfortable.

THE COURT: That's fine. And what I will endeavor to do is to deal with these issues at the next omnibus hearing. I think we should list it as an item for status conference, and it will be just that. I'll either be in a position to rule or I'll tell you I need more time, because I'm still thinking about the issues.

MR. MILLER: Thank you, Your Honor.

THE COURT: Now, we --

MR. MILLER: I think we're up to number 11.

THE COURT: Number 11 is Marie Hunter's motion for payment of an administrative expense?

MR. MILLER: Yes, Your Honor.

MR. WEISMAN: Yes, and for the Debtors, Kramer Levin is handling the matter.

MR. O'NEIL: Your Honor, Brad O'Neil, Kramer Levin and special employment counsel to the Debtor, it is actually Ms. Hunter's motion, so I'm going to turn it over to counsel.

MR. UNIDENTIFIED: Your Honor, may we be excused?

THE COURT: Yes, you may be excused.

MR. FRIEDMAN: Good afternoon, Your Honor, Michael Friedman, Greenberg Friedman LLP, representing the Claimant, Marie Hunter in this matter. Ms. Hunter is seeking to have a severance payment that she was entitled to receive under a

written agreement, treated as an administrative expense under Section 503(b).

I just want to note as a matter of housekeeping, Your Honor, that I did file a timely reply with the ECF and also served it on the parties yesterday, and I did not see that document reflected on the calendar, so I don't know if Your Honor has had a chance to look it over yet, but I will attempt to cover those points in this argument.

THE COURT: I don't know what you're referring to, so I believe I haven't seen it.

MR. FRIEDMAN: Okay. I did also have a copy hand-delivered to your chambers.

THE COURT: I'm not going to read it while you're talking.

MR. FRIEDMAN: That's fine, Your Honor, I'll address the arguments here.

Ms. Hunter was a managing director in a corporate services group of Lehman Brothers, which provides services to the 26,000 employees globally, in terms of a food service, travel service, sponsorship events, things of that nature.

THE COURT: Look I understand basically what's involved here. That your client was terminated as part of a reduction in force, that predated the bankruptcy, that there was an agreement signed on September 12, that the agreement called for a payment to be made of, I think, $160,000, and for

your client to be available for recall services to assist Lehman Brothers, if Lehman Brothers asked her to come to work. Do I have it right so far?

MR. FRIEDMAN: I would just take one exception to that characterization, Your Honor. Ms. Hunter was notified that her job was being eliminated on September 8th, that under the terms of the agreement, she was to remain an employee until the quote/unquote separation date, which was the earlier of November 21st, 2009, or the date that she found new employment.

THE COURT: Yes. But it's correct that the agreement that relates to these mutual obligations was entered into pre-petition.

MR. FRIEDMAN: Yes, Your Honor. Yes, correct.

THE COURT: Okay.

MR. FRIEDMAN: We believe this case is indistinguishable from the Second Circuit's decision in Strasse DuParkay (phonetic).

THE COURT: Whoa. You can't be right about that. How can you say the facts are indistinguishable --

MR. FRIEDMAN: Well, we believe this is a severance --

THE COURT: -- because -- well, I'm --

MR. FRIEDMAN: Okay. Your Honor, I'm -- I'll take a step back.

THE COURT: If you're going to -- take a step back, because if you're going to make an argument that says something

that I completely disagree with, you're going to have problems.

MR. FRIEDMAN: Okay. Fair enough. Then I will have to take a step back.

THE COURT: Yeah, take a step back, because as we just went through the fact pattern, the agreement relating to severance was entered into pre-petition. In Strasse DuParkay, the severance itself took place, I believe under a collective bargaining agreement post petition.

MR. FRIEDMAN: Well, Your Honor, I don't know that -- I was under the impression reading the case that it was a post petition -- a pre-petition collective bargaining agreement. If Your Honor believes otherwise --

THE COURT: Well, the termination took place --

MR. FRIEDMAN: Termination.

THE COURT: The termination took place, the severance took place --

MR. FRIEDMAN: Yes.

THE COURT: -- post petition.

MR. FRIEDMAN: Yes.

THE COURT: People debate Strasse DuParkay all the time.

MR. FRIEDMAN: Yes.

THE COURT: It's like Friendville (phonetic) in the Third Circuit. It's one of those cases that people debate because it affects planning.

MR. FRIEDMAN: I have no doubt, yes, I can see where it would.

THE COURT: So go ahead.

MR. FRIEDMAN: Well, I mean, did you want -- does Your Honor want more of a factual description, or does Your Honor under --

THE COURT: No, I think I understand the facts.

MR. FRIEDMAN: You understand the facts, okay. Well, it's our position, Your Honor, that you know, severance was defined in -- by the Second Circuit in Strasse DuParkay as compensation for a termination of employment, where employment was terminated as an incident of the administration of the bankrupt's estate, and that's what -- and that those payments are entitled to an administrative priority. And we believe this is exactly what happened here.

Ms. Hunter was notified that her job was being eliminated pre-petition, and she signed the agreement pre-petition, which entitled her to remain as an employee, and continue to receive salary through her separation date. And then on September 30th, 2008, after she had performed post petition services and after she had -- after the Debtors filed for bankruptcy protection, they terminated that agreement, and triggered her separation and her right to receive that severance payment.

Now, the Debtors have attempted to distinguish Strasse

DuParkay on two grounds. First they cite that where the employee bargained for an unconditional right to severance pre-petition, then the severance payment would not be entitled to administrative expense. That did not happen here, because the triggering events -- this was not a beginning of employment contract. This was a, you have been notified that your job has been eliminated and here's what we're going to do for you, and one of the things they offered to do was to provide a severance payment, in addition --

THE COURT: Yeah, but --

MR. FRIEDMAN: -- to the salary situation --

THE COURT: -- as you describe that --

MR. FRIEDMAN: Yes.

THE COURT: -- it seems to me you're also describing a significant factual distinction between Ms. Hunter's claim and the claims that the Second Circuit addressed in Strasse DuParkay. Here, your client's claims arise under a pre-petition agreement. All of the claims, at least as I understand the facts, spring from the agreement that was entered into, I think on September 12.

MR. FRIEDMAN: Correct, Your Honor.

THE COURT: And so you have a September 12 agreement, which is what gives whatever legal entitlement your client has to a payment, it all traces to a pre-petition agreement.

MR. FRIEDMAN: Correct.

THE COURT: I think that's a problem in terms of fitting this fact pattern into Strasse DuParkay.

MR. FRIEDMAN: Okay. Well, in terms of McFarland's, McFarland's has recognized that, you know, pre-petition contracts that give rise to post petition transactions, can also be entitled to an administrative priority, and we would argue that case falls within that rule, where you have a pre-petition contract, but post petition transactions where the estate received some benefit, and to the extent the Debtors suggested -- the Debtors have suggested that to the extent that we did not establish the extent of the benefit, or the nature of the transaction in our papers, that they suggested we have an evidentiary hearing on that point. And we would agree to that in the alternative, if Your Honor, as seems to be the case, does not think --

THE COURT: Well --

MR. FRIEDMAN: -- Strasse DuParkay applies.

THE COURT: -- I'll hear from the Debtors on this. I don't recall seeing in the Debtors' papers, a suggestion that we have an evidentiary hearing.

MR. FRIEDMAN: Paragraph 22 of the objection, Your Honor.

THE COURT: Then you obviously read it more carefully than I did. Is it in paragraph 22?

MR. FRIEDMAN: If I'm --

MR. O'NEIL: Weil Gotshal's not handling this matter. Kramer Levin is special employment counsel.

THE COURT: Oh.

MR. O'NEIL: I don't know what the paragraph is.

THE COURT: Okay. Fine.

MR. O'NEIL: We suggested if wanted to prove benefit to the estate, he had to prove it.

THE COURT: All right. Fine.

MR. FRIEDMAN: Should I --

THE COURT: Yeah, let's hear what Kramer Levin has to say.

MR. FRIEDMAN: Thank you.

MR. O'NEIL: Your Honor, I'll be brief. It's been a long morning.

The only thing I would emphasize is the nature of the contract that was entered into pre-petition. The essence of Strasse DuParkay is that a right to payment arises upon termination, the severance is earned post petition in that situation. Here, there was no right of payment that arose post petition. The right to payment -- every right to payment here was provided for in absolute terms under a pre-petition contract.

And I think counsel focuses on the fact that there's a termination date mentioned in the contract, but it's not as if that is a hypothetical or a conditional event in the future,

maybe if you're terminated, we'll pay you this amount. All that date controls is the timing of the payment, the right to the payments, all fixed in the pre-petition agreements, are absolute.

So it's not a situation in which it -- as for example, in a pre-petition employment contract where there is the potential for you to be terminated at some point in the future, here, all circumstances of the separation were established. There isn't an event in the future that could or could not occur, on which a right to severance would be earned. Every right under the contract was earned pre-petition when the contract was entered into.

And as to the notion of an evidentiary hearing, we think it's a little bit far fetched that counsel's going to be able to establish that in performing under this contract, he provided $160,000 worth of benefit to the estate, particularly when we're talking about an employee who was working -- to the extent she was working at all from home for a brief period of a few days, and for which labor she has already been paid.

But the possibility, I guess, remains in some theoretical sense that he could attempt to establish that. If he does want to go forward with that, obviously we need to take discovery, and we need an opportunity to contest whatever evidentiary showing he makes.

THE COURT: All right. Well, on the basis of that --

MR. FRIEDMAN: Your Honor, may I just be heard on two more brief points?

THE COURT: Sure, I'll allow -- I was about to say something that would have --

MR. FRIEDMAN: Then I will keep my mouth shut.

THE COURT: -- allowed everybody to go into the next matter, which is the SIPC matter. But if you want to say something, that's fine as long --

MR. FRIEDMAN: Two brief points --

THE COURT: -- as they --

MR. FRIEDMAN: -- the first is the only services that my client provided after this agreement were, was entered into were post petition. And the second point I wanted to make is that the agreement itself provides for 45 days for Ms. Hunter to review the document before entering into. So it was really simply fortuitous, the fact that this was a pre-petition contract she had.

So for this issue to turn on something that was random as to the date that she decided to sign the agreement, and submit it to Lehman seems like it wouldn't create the appropriate bright-line rule.

THE COURT: Okay. Well, I'll just, as to that last point mention that the petition date in bankruptcy is always a bright-line, and the treatment of claims that arise pre-petition versus the treatment of claims that arise post

petition depending on the circumstances of the Debtor, almost always is different.

The contract appears without dispute to be a pre-petition contract, by virtue of the fact that by happenstance it was signed on September 12, although it could've been signed later. But that happenstance matters.

MR. FRIEDMAN: Fair enough.

THE COURT: And this is a pre-petition severance agreement. As a result, based upon the motion that has been filed, I'm not prepared to grant you any relief, in terms of an administrative claim, with respect to the $160,000 that appears to be payable, in reference to agreed severance. But I do that without prejudice to your ability to press forward, should you choose to with some argument concerning benefit to the estate, by virtue of her services performed post petition, which may or may not entitle her to an administrative claim as great as 160,000.

So that the offer made by counsel, special counsel in this case, to proceed with discovery and move forward toward a possible evidentiary hearing is one that you may want to accept, and if you accept it, we'll see you in court some other day.

MR. FRIEDMAN: Very good. Thank you, Your Honor.

THE COURT: Okay.

MR. KOBAK: Good morning, Your Honor, or maybe it's

afternoon now.

THE COURT: It is afternoon now.

MR. KOBAK: James Kobak, Hughes Hubbard & Reed for the SIPC trustee.

Your Honor, we just have one matter on our calendar today, and I'll try to be as brief as possible. It's a status conference with respect to the trustee's motion to allocate property between the fund of customer property and the general estate.

This is an important motion to us, because it's a necessary step to knowing what assets are available to distribute to customers, and therefore, when we're a little further along in the claims process, what kind of distributions either permanent or interim we'll be able to make.

The bulk of the property in the trustee's possession is essentially property that was segregated for customers, so I think essentially what we're talking about in this motion is several million -- several billion dollars of property that was in a gray area. We contend that a lot of that property wasn't segregated as it should've been under the applicable SEC rules, either because of mistakes that were made at the end, or because of misinterpretation of where -- of the rules or what have you. And we think there is -- from what we know today, we think there's up to $4.9 billion of property that we know about that may not have been properly segregated.

Because this is an important motion, and because there are some factual issues about particular items and how they were treated for SEC purposes and so forth, we actually filed it back on October 5 to give people a little more than the normal 20-day notice period.

We've received nine objections by the due date. We have been talking to some other important parties, such as the holding company, the creditor's committee, Libby and Barclay's that also have some questions about the motion. We've been trying to resolve that, so that when they file objections, if they file objections, they'll be -- perhaps be more limited than they otherwise would be.

THE COURT: Let me understand something about what you just said, however. You said, when they file objections or if they file objections, is there a general extension of the period of time when objections can be --

MR. KOBAK: For these parties --

THE COURT: -- filed for these parties?

MR. KOBAK: -- because they came to us with specific concerns.

THE COURT: All right. And when is the cut off?

MR. KOBAK: We haven't -- what we planned to do is have a meeting. I think the creditor's committee and the holding company are going to, as I understand it, retain a common expert. We have an expert, Mr. McDay (phonetic) that

submitted a pretty lengthy affidavit. I think what we're going to try to do is have a meeting with them, and with the experts to see if we can't, at least, narrow if not eliminate some of the issues.

THE COURT: All right.

MR. KOBAK: And at that point, we'll give them a date.

We have talked to the -- I think all of the other parties at least one other party -- one party has already withdrawn their objection. We made some changes to the order, which we filed at the beginning of this week to take account of some of the points that people had. I think in principle those changes should resolve the objections of a number of others, having said that, in addition to the holding company and the creditor's committee, there may be a few other parties that continue to have objections. We'll try to meet with them and work out what we can.

We do have the schedule to come on again, at the next omnibus hearing in December. I frankly don't think we'll be in a position to say it's resolved, although it is very much in our interest to do everything possible to try to expedite the procedures on this and get a resolution because it is so important to be able to -- to being able to know what we can do with customer clients.

THE COURT: So you're telling me this is going to be on the December 16 omnibus without a lot of hope that it's

going to be the final date for --

MR. KOBAK: I have some hope, but not a lot of hope, Your Honor.

THE COURT: Not a lot of hope, okay.

Now, is there anybody who has any comments on these procedures at this point?

MR. MONTGOMERY: Your Honor, this is Claude Montgomery from Sallens LLP (phonetic), since the (indiscernible) filed an objection to LVIE request. It is a general unsecured creditor of the LVI estate. It is not a customer creditor of the LVI estate, and we just want to make sure that if there is an evidentiary hearing going forward, that we are apprised of the timing of that, in the same fashion that the creditor's committee and the LBHI Debtors are apprised.

THE COURT: I assume the entire world will get notice.

MR. KOBAK: Yes, Your Honor, definitely, and we do intend to try to talk to them a little more about the basis of their objections.

THE COURT: Okay.

MR. KRASNOW: Your Honor, Richard Krasnow for the Chapter 11 Debtors. Mr. Kobak accurately reflected the approach that the committee and we are taking with respect to this. The only thing I want to alert the Court to is the committee and the Debtors have identified Grant Thornton as our expert to assist us in this process. We are going to try to

accelerate and expedite our review and analysis, and accordingly we anticipate that Grant Thornton may start looking at this before they're formally retained, and so I simply want to alert the Court to the fact that when we do file our retention papers, we will be doing so on a nunc pro tunc basis, Your Honor.

THE COURT: That's fine.

MR. STEELE: Your Honor, Howard Steele, Brown Rudnick on behalf of Newport and Providence Funds.

We did submit some informal comments to the Trustee, and he graciously added the language we submitted, and we also had an extension of our objections on line, but it was not really a fixed extension. I would just ask -- confirm that we still have an extension to see any further revisions and object and add further comments.

MR. KOBAK: Yes, certainly, Your Honor. I thought that our changes had taken care of your objections, but if you want to talk about it further, that's fine.

MR. STEELE: That's great.

THE COURT: Okay. Does that take care of the status conference? Then that --

MR. UNIDENTIFIED: As far as I'm concerned, yes.

THE COURT: Then that takes care of our morning calendar, and we're adjourned until 2:00.

(Recess taken until 2:00)

C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a true and accurate record of the proceedings.

Pnina Eilberg

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